OUR GOVERNMENTAL MACHINE

SCHUYLER C. WALLACE

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OUR GOVERNMENTAL MACHINE

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Charles A. Beard

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Graham Wallas

THE GERMAN CONSTITUTION
René Brunet

OUR GOVERNMENTAL MACHINE

by

SCHUYLER C. WALLACE

of Columbia University

With a Prefatory Note by

Charles A. Beard

New York

ALFRED · A · KNOPF

1924

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PREFATORY NOTE

My friend and former student, Mr. Wallace, asks me to write a few words to serve as a preface to his first venture into the realm of book publishing. I do not think that any commendation from me will add to the substantial merits of his book, but I am glad to comply with his request because I believe that his little volume will serve a useful purpose. He has especially designed it for those who are making a serious beginning in the study of American politics and in my opinion has succeeded admirably in his undertaking. I am all the more happy to say a good word for his book, because in it he expresses dissent from many propositions which he heard in my class-room and strikes out on new lines of his own. It is by applying the Socratic elenchus to cherished notions that we advance slowly along our dusty way.

Though Mr. Wallace's book is primarily intended for beginners in the study of politics, I am inclined to think that many who imagine themselves wise in their generation may profit from reading it. The method of approach is novel. It has none of the stilted formalism of the "civics" book—a form of "literature" that has done immense damage to the interest which boys and girls naturally have in public affairs. In

accordance with the latest fashion, Mr. Wallace opens with a consideration of "public opinion" rather than with the sacred letter of the Constitution—Fifteenth and Eighteenth Amendments and all. Though new in aspect, the idea is not revolutionary; many years ago Judge Cooley was so brutally indifferent to the Sisyphian labors of our Minute Men as to blurt out the truth that the Constitution is what we think it is. So Mr. Wallace has high sanction for beginning with an analysis of public opinion.

While there is nothing formal about this book, the author has managed to include within his pages about all the capital facts that are supposed to be necessary for a beginner's armory. He has tucked them in here and there in the course of his exposition and reflections. Even our ancient and elusive friend, Mr. Separation-of-Powers, walks through a paragraph. In this form the old facts seem more palatable than when severely set forth with approved academic angularity. To the essentials of politics Mr. Wallace has added conclusions and suggestions of his own derived from independent study. There are, for example, some passages on the role of third parties in American politics, which can be read with profit by those who have devoted laborious years to the subject.

The whole story of this book is woven around some of the liveliest themes which are engrossing the attention of scientific observers in the field of politics—observers who while looking on the passing show with academic calm would nevertheless like to throw

something weighty into the scales now and then. Finally, there is a great deal of humor in this book. Not a little inheres in the subject matter as judiciously chosen by the author. Then, Mr. Wallace himself in crossing the most arid desert keeps his eyes open for every little tuft of green that shoots up through the sand and remarks upon it in a manner appropriate to the scene. I venture the suggestion that even the most seasoned veterans in book reading and political caucusing will find something to their advantages in these pages.

CHARLES A. BEARD.

New Milford, Conn.
August 17, 1924.

FOREWORD

The aim of this little volume is to present to the reader a picture of our governmental machinery in terms of fundamental processes and relationships. Stress has been laid on some of the more outstanding problems and the citizen's relation thereto. The author has at no point attempted to make an original contribution to the science of politics, but has confined his efforts entirely to putting into a compact but readable form a discussion of some of the more vital questions of political organization.

The response to the material here presented both on the part of the readers of *The Woman Citizen* in which it first appeared, and on the part of the radio audience which heard the lectures over WEAF was gratifying, indeed, and is in large measure responsible for the publication of the book. It is hoped that an enlarged circle of acquaintances will find the contents of the volume somewhat stimulating to thought upon the questions considered.

I should like to express my appreciation to my colleagues, Professor Arthur W. Macmahon and Mr. A. Gordon Dewey, and also to Mr. Harold A. Van Dorn, for the assistance they have from time to time

rendered me in connection with the preparation of the manuscript.

SCHUYLER C. WALLACE

New York City
July 7, 1924

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OUR GOVERNMENTAL MACHINE

BOOK ONE

POPULAR CONTROL

CHAPTER I

PUBLIC OPINION

The will of the people shall be the law of the land. This is the fundamental assumption of democracy. And nowhere more than in the United States has this assumption been accepted and revered. Nowhere, until recently, has public opinion held greater sway. It behooves us, therefore, to pay some attention to this force which like the current from a mighty dynamo drives on the wheels of state. Is this ruler of mankind the quintessence of pure reason or is it a great compound of passion, prejudice and weakness? Is it the wisdom of the masses or is it their folly as well? This is a grave question. That public opinion has often been right, more often, perhaps, than the opinion of any ruling clique or class, the history of both Great Britain and the United States would seem to indicate. But is it always and infallibly right, or is it more often wrong? At a time when the world is crushed beneath the burden of a great war, a war acquiesced in and supported by public opinion in all the countries concerned, one hesitates to answer with an unqualified affirmative. When public opinion but recently arrived at a conclusion that made possible a catastrophe

without parallel in the world's history, it would seem that somewhere, somehow, an element of irrationality must have crept in.

Whence came the element of irrationality? Or rather, since we are not concerned with the historical question, what factors tend to distort the judgment of whole nations? What are the difficulties in the way of the formation of a rational public opinion? Among the difficulties that stand in the way of the formation of such an opinion are (1) certain personal defects common to the great mass of humanity, (2) the existence of numerous and powerful propaganda agencies, and (3) certain defects or limitations seemingly inherent in the daily press.

A rational judgment can be made only on the basis of *facts*. Nine tenths of court procedure is devoted to their discovery. The chief work of the scientist, without which all his other work is impossible, is their ascertainment. The main purpose of the credit and research bureaus of great banking institutions is their collection. Facts, facts, facts—without these, nothing. And yet facts are among the hardest things in the world to ferret out. Especially is this true in the field of public affairs, for to practically every public question the individual brings a set of preconceived ideas, a bundle of prejudices, a bias. These ideas are not the result of the study of a given situation; the situation is usually studied in the light of these ideas.

That each of us possesses these biases becomes apparent upon a moment's reflection. Two incidents

will serve to illustrate. An election for the office of comptroller is occurring in your city. It comes out that one candidate is a Roman Catholic, and the other is not. What is the effect of that piece of information upon your thinking? The fact is that a man's religion could have no possible bearing upon his fitness to hold the particular office in question. And yet has not the knowledge concerning his religion consciously or unconsciously affected your processes of thought? If you are a Roman Catholic, are you not more kindly disposed toward him? If you are a subscriber to the "Menace," do you not feel doubtful about him? A headline comes out in the morning paper: "Miners strike; coal famine feared." What is your reaction? If you are a member of the middle class, is not your inclination, with little or no investigation of the particular case, to place the blame on the miners and hope "they get what is coming to them"? If you are a member of a labor union that has just finished a severe strike, does not your sympathy go out to the miners? Does not your conversation consist primarily in "damning the interests"?

Most of us, if we are honest with ourselves, will have to admit that our thinking is very often colored by an emotional reaction. We will have to admit that very frequently we fail to suspend judgment long enough to ascertain the facts on the basis of which alone a really rational judgment can be reached, and that we make up our minds on the basis of our preconceptions.

In part these preconceptions come to us with our

early training; in part they are the results of our environment. What matters is not that they develop within us but that at no time do we analyse and weigh them in order to separate the truth from the falsehood. Instead, we act upon them blindly and frequently build for ourselves conceptions of the world at considerable variance with reality. Such was the process of thought of those who in the middle ages insisted that the earth was flat; such is the process of thought of many at the present day. Worst of all we pass on these erroneous pictures of the world to our children and they become in many cases the basis of action for succeeding generations.

Our failure to analyse these "stereotypes," these conceptions of the world built upon fancy rather than fact, the product of the emotions rather than reason, is readily understood. In the first place, it is easier to accept than to analyse, and man is by nature intellectually lazy. In the second place, these stereotypes make the world *seem* a more comfortable place. They are a defence of our position in society. When we accept them we know what's what. We feel at home in the world. We fit in. If we once began to analyse our opinions, who knows what might happen? Some of them might be false, and that would hurt our pride. There might be some questions to which we could find no answer, upon which we would have to suspend judgment, and that would be very annoying indeed.

Not until we are willing to adopt the same attitude

in our thinking upon public questions, however, that men of science have adopted toward scientific questions, can we hope to have a rational public opinion. And not until a rational public opinion is prevalent throughout the world can we hope to eliminate war or overcome social mal-adjustment in its other varied phases. A well-known English writer describes the scientific attitude of mind when he says "None of our beliefs are quite true; all have at least a penumbra of vagueness and error. The methods of increasing the degree of truth in our beliefs are well known; *they consist in hearing all sides, trying to ascertain all the relevant facts, controlling our own bias by discussion with people who have the opposite bias, and cultivating a readiness to discard any hypothesis which has proved inadequate. These methods are practiced in every science, and have built up a body of scientific knowledge.* Every man of science whose outlook is truly scientific is ready to admit that what passes for scientific knowledge at the moment is sure to require correction with the progress of discovery; nevertheless, it is near enough to the truth to serve for most practical purposes, though not all. In science, where alone something approximating to genuine knowledge is to be found, men's attitude is tentative and full of doubt." [1] Such is the attitude which must be adopted toward public questions.

Stereotypes, however, are not the only personal lim-

[1] Russell, Bertrand. *Free Thought and Official Propaganda*, p. 15.

itation which hinders the development of a rational public opinion. Two others ought at least to be mentioned. These are (1) the limited contacts enjoyed by most people and (2) the slight amount of time they give to informing themselves upon public affairs.

As a general rule people "live in grooves, are shut in among their own interests, barred out of larger affairs, meet few people not of their own sort, read little," [1] and all in all come in contact with very few points of view not similar to their own. To some extent this is due to economic causes which limit travel and the purchase of books, but more often it is due to personal volition. Birth dictates in great measure the social set in which we move. As for mixing the various sets,—it simply isn't done. Rare, indeed, is the prosperous business man who engages in a protracted conversation with a plumber; rare, indeed, is the plumber who carries on an extensive correspondence with a back country farmer. And the barrier which exists between men is intensified many fold where women are concerned. Perhaps as great a factor in narrowing the horizon of the average man is that almost instinctive dislike people have of listening to opinions with which they do not agree, which disturb their convictions. And yet if we are ever to achieve a general judgment capable of running these complex affairs of ours in a rational way, it is imperative that all points of view be given a hearing; for in all points of view there is apt to be a modicum of truth, and

[1] Lippmann, Walter. *Public Opinion,* p. 48.

it is only by understanding these points of view that we can acquire even that modicum, and only by a compilation of modicums that we can approximate the truth.

Neither defect can be remedied except at the cost of time and trouble to the individual citizen, and the limited amount of time the average citizen devotes to public affairs is in itself one of the great difficulties in the way of the formation of a rational public opinion. How limited this is, is best revealed by self-analysis. No general statistics are available. It is significant, however, that the few statistics we have indicate that less than ten minutes a day are devoted to this important task.

These personal limitations, however, are not the only factors that stand in the way of the development of a rational public opinion. The existence of numerous and powerful propaganda organizations employing highly paid legal, journalistic and forensic talent should not be overlooked. No criticism of these organizations is intended. The fact which concerns us is merely that each of them is pleading a special cause. Like lawyers before a jury, they are presenting their cases before the bar of public opinion in a manner conducive to a conclusion favorable to themselves. But, unlike lawyers, they are governed by no rules of evidence; extraneous and irrelevant matter is not ruled out; no penalty exists for perjury; there is no cross-examination by an opposing counsel to which the jury must listen; there is no opportunity for questions.

Truths, half-truths and falsehoods are unloaded upon the public. And from the maze of fact and error must the precious kernel of truth be sifted.

Perhaps the reader thinks, however, that he has never come in contact with propaganda. Oh, of course, he acknowledges that the Anti-Saloon League has presented its cause to him. But that's all. I wonder? There is the Republican party, the Democratic party, the Progressive party, and the Farmer-Labor party. Is their publicity always impartial? Do the churches present the pro's and con's of the questions they discuss? From how many orthodox pulpits have you heard the case against Christianity fairly presented? Even here we encounter a brief for a cause, justified no doubt—but propaganda nevertheless.

Then there is the activity of the various economic groups. Have you ever been in New York City and failed to see the *Subway Sun?* Have you been overlooked entirely in the distribution of literature by the National Association of Manufacturers, the United States Steel Corporation, the great banking houses, the great railroad systems? Have the Chambers of Commerce, Rotary and Kiwanis Clubs missed you altogether? Have the granges, farmer-unions, labor unions, city clubs, civic clubs, university clubs, parent-teacher associations, charity associations, playground associations, etc., never attempted to influence you? Have you had no appeals from the Y. M. C. A., the Y. W. C. A., the Red Cross, or the Veterans Relief? Only the dead or the mentally deficient can

escape. Practically everything you read, practically everything you hear within the field of the social sciences contains at least an element of propaganda.

All this means that unless the individual acquires an analytical frame of mind and develops the habit of questioning authority based on prestige, demanding proof for all statements and weighing evidence, he will often fall into error and in so doing will contribute his share toward the formation of an irrational public judgment.

But neither personal defects nor propaganda of the kind we have been describing are entirely responsible for the mistakes of public opinion. The printing press, although it has made democracy in large countries possible and although words without number might be multiplied in its eulogy, nevertheless in certain of its aspects stands to-day one of the gravest dangers that democracy has to face. How great its power is, few realize. Its influence extends to every branch of thought. It opens all doors of the mind. It exercises and fulfills the functions of teacher, preacher, censor and critic. "Napoleon once said that four newspapers were more dangerous than a hundred thousand soldiers, and he thought his conquests unstable until he had subdued the press of Europe and compelled it to take its opinions from the *Moniteur* which he edited himself. . . . Samuel Taylor Coleridge was a writer on a London paper, at the insignificant salary of a guinea a week. And yet his editorials so disturbed the Emperor that Fox declared in the

House of Commons that the Treaty of Amiens would be broken and the peace of Europe destroyed unless these articles were stopped. Afraid to touch the liberty of the press, the British Cabinet nevertheless secretly informed Bonaparte of the vessel Coleridge was on coming from Italy to England. In pursuit of this then obscure author sailed French frigates and sloops of war and a most significant tribute to the power of the press was this union of treachery and force by the two greatest nations upon earth to silence a humble journalist." [1] But the very data which can be amassed to indicate the power of the press merely emphasize the seriousness of any defects inherent therein.

Two facts present themselves in modern journalism. One is that the newspapers are the servants of democracy, placing before it the information upon which it makes its decisions. From their columns is gleaned most of the knowledge that is possessed by the usual citizen. They are the sources of information. They are the purveyors of facts—the facts upon which the world is run. Their location at the fountain head of information makes them the guardian of democratic institutions. That this duty is recognized, the slogan of many a paper indicates.

The other fact that stands out impressively in regard to these great institutions is that they are commercial enterprises run for private profit—that the chief end of their operation is dividends in one form or another.

[1] Depew, Chauncey M. *The Liberty of the Press,* p. 8.

The day when a printing press and a few reams of paper sufficed to get out an edition is gone forever. Today capital approximating a million dollars is necessary for the running of a metropolitan paper—and newspaper enterprises in even the smaller cities require the investment of thousands. The money has not been raised by philanthropists for the promotion of learning. It is not the possession of foundations to be spent for the dissemination of wisdom and knowledge. It is the investment of hard-headed business men who are running these enterprises just as they would run any other business—for the return that is "in it" for them. At the head of every newspaper of the country, along with its slogan concerning its duty to the public weal, might well be added another slogan concerning its duty to its stockholders or its owners. In the upper left hand corner of the front page the traditional slogan may well retain its place—First to last, the Truth; but in the opposite corner there might well be printed in the majority of newspapers another motto—First to last, Profits.[1]

These, then, are the two ends of the newspaper. The danger comes when the two purposes conflict. A newspaper cannot always serve two masters. There come times when the Truth and the Profits do not walk together. Then comes the tug of war—and all too often Profits win the day. It is the perversions of the truth of which the modern press is too often

[1] (It should be remarked, however, that the profits sought are not always monetary in character.)

guilty that constitute a standing menace to democracy.

The most apparent perversion of the press is the distortion of news to favor a particular class or clique of politicians. To find evidence of this, is very easy. If the reader lives within an area in which several newspapers are available, let him buy *all* the newspapers upon a given day, being sure to obtain not only Democratic and Republican papers, but Farmer-Labor and Socialist papers as well. Let him pick several of the most important items of political news and trace their treatment through the various papers. He will find, in all probability, as many different accounts as there are newspapers. Each treats the topic in a slightly different way—a little emphasis here, a touch of color there, an omission in this regard, an addition in that—all combine to produce accounts of the same thing so different that an action which is to be approved as related in one paper is to be disapproved if it occurred as described in the next. An excellent example of "judicious selection and emphasis" appeared in the *New York Nation* of recent date.[1] Mr. Alva B. Adams, recently appointed United States Senator from Colorado to fill an unexpired term, had given a long interview to the press, a report of which was given in the *New York Times*. Mr. Adams, so the *Times* said, believed in private ownership of railroads, in the abolition of the railroad labor board, in the enforcement of prohibition and in effective military

[1] *New York Nation.* (Vol. 116, No. 3024.)

preparedness. He rejected La Follette's foreign policies and believed that America should become a member of the League of Nations' Court. All in all, from the metropolitan daily's account one would think he was a moderate conservative, very much of the Harding type. From the same interview Mr. William Hard, correspondent of the *New York Nation,* selected other points to emphasize. He found that Mr. Adams had also said:—"I consider myself a progressive. . . . The intervention of the state has to-day become necessary to preserve the freedom of the individual. . . . The Government should prevent working conditions which are destructive of the welfare of the worker. . . . I believe in a minimum wage as a first charge upon industry. . . . I am opposed to any legislative or court action which prohibits labor's right to strike. . . . I believe absolutely in labor's right to organize and bargain collectively through representatives of labor's own choosing. . . . Some provision can and should be made to prevent the burden of unemployment from falling so heavily on employees out of work. . . . I favor a return to the principles of the excess-profit tax. . . . I believe in the right of free speech and assemblage."—Somehow it is a different impression of Mr. Adams that one gets from this report of the interview!

Why is there this difference? In part, it is the unconscious play of the reporter's prejudices. Primarily, however, it is the conscious endeavor of the

reporter to adapt his "story" to the policy of the paper he is serving. And that policy is determined in the majority of cases by the proprietors.

A further perversion of the modern press is that caused by economic pressures. One form of this comes in connection with advertising. *Profits come from advertising. Advertising comes from big business. Who pays the piper calls the tune.*[1]

This is the usual charge, and so far as a considerable number of papers is concerned it contains, without question, a large element of truth. Nevertheless, some qualification of the statement is necessary. The newspaper or magazine with a large circulation and many advertisers can afford to offend this or that advertiser —even as the large department store can afford to offend the individual customer. Few newspapers, however, can afford to offend all or even a large portion of their financial supporters. This means, in a word, that few newspapers, indeed, can afford to offend big business. In regard to those things upon which big business is divided or indifferent, the larger papers have a considerable measure of independence, but in regard to those matters on which corporate wealth is unanimous or nearly so—courageous, indeed, is the newspaper that can be independent.

More serious, possibly, than either of the foregoing defects is the appeal to prejudice and passion seemingly inherent in the present system of newspaper

[1] Morris, O. S. *The Freedom of the Press* (Address Before the Open Forum at the City Hall, St. Paul, Feb. 29, 1920).

ownership. Newspaper management under a system in which the incentive of profits is the most powerful impulse, of necessity resolves itself into a race for circulation; for circulation means advertising, and advertising means money. In general, this signifies yellow journalism. The way to sell the paper is to catch the public's fancy. That fancy may best be caught by an appeal to the emotions, prejudices, biases, complexes, or what not, of the multitude. To catch and retain that fancy much must be sacrificed. And so the newspaper staff trims and adorns its stock in trade—the news—in the way which in its judgment will produce the largest sales. "First to last, the public" becomes one of the mottoes of the newspaper office. And you have newspapers dramatizing events —introducing heroes and villains where none exist—well aware that for millions the melodrama is the most popular form of entertainment. Hence you have appeals to race hatreds, religious antipathies and national prejudices. Indeed, it is frequently both safer and more profitable to encourage the public in the falsehoods with which it is familiar than to tell it the unpleasant truths it does not want to hear.

It would seem, then, that the press is a frail instrument with which to carry the burden of popular government. And consideration of the real nature of the news even when undefiled by the perversions noted above but confirms the belief. At best the news is not a "mirror of social conditions, but merely the report of an aspect that has obtruded itself." So says

one of the ablest analysts of the modern press, and but little reflection is necessary to confirm the truth of his statement. The newspaper reporter does not survey the entire realm of human activity. He can not. For the most part he confines his gaze to those places where private activity touches public authority. The result is that merely an aspect of a situation is presented to the public. Inevitably the public often obtains a distorted impression of what is actually transpiring. So frequently is this the case that it has led Mr. Lippmann, the critic cited above, to maintain that the news and the truth are not synonymous. "The function of the news," he says, "is to signalize the event, the function of truth is to bring into light the hidden facts and set them into relation with each other, and make a picture of reality on which men can act." The press "is like the beam of a searchlight that moves restlessly about, bringing one episode and then another out of darkness into vision. Men cannot do the work of the world by this light alone. They cannot govern society by episodes, incidents and eruptions." [1]

But that in great measure is exactly what they *are* trying to do. And the distortion of the news by the forces previously discussed makes the task even more difficult.

Is there any panacea? None. Certain of the defects, however, can be partially overcome. The obvious course to pursue upon the discovery that certain

[1] Lippmann, Walter. *Public Opinion*, p. 358 and 364.

papers place certain emphasis on this or that is to discount that emphasis. Perhaps the best way to do this is to check one paper against another and occasionally, if not regularly, compare the accounts that are given of the world's news. A further corrective is the reading of magazines which review the happenings of the week, and in this reading you should include a periodical with whose point of view you entirely disagree.

But it is only by the study of books that the defects of the modern press can be overcome. The preparation of a book is a much more careful and painstaking undertaking than the writing of an article for the press, and as a result books are generally much more accurate than the press. But there are many books, and some of them are more worthless than the yellowest papers! By a judicious following of the book reviewers, however, or by obtaining guidance from the specialists in various fields of knowledge, it *is* possible for the average individual to make a selection which, with but a reasonable expenditure of time, will place him among the well-informed few.

But what has all this to do with government? Everything! On the basis of the information or misinformation now obtained from the press, the individual forms a judgment which becomes a part of and helps to determine that great force—public opinion. And public opinion rules the country. Our political parties, city councils, state legislatures, and Congress exist for the sole purpose of enacting into law the deci-

sions of public opinion. Whatever defects exist in the machinery that supplies the public with the information upon which it bases its decisions are basic defects in the governmental machinery of the country.

It is to a consideration of the difficulties in the way of the formation of a rational public opinion that your attention has been called in this chapter. It is with the question: What can you do to remedy them? that it leaves you.

Suggested Reading

Lippmann, Walter. *Public Opinion* (1922)
Angell, Norman. *The Press and the Organization of Society* (1922)

CHAPTER II

THE LONG BALLOT

How can public opinion best be translated into governmental action? This was one of the first questions which confronted the early advocates of democracy in the 20's and 30's of the 19th century when this new, radical philosophy was sweeping the land. The forces which popularized the theory need not concern us here. Suffice it to say that by 1850 democracy had conquered and remains to this day the dominant philosophy of government in America. The problem which confronted its early exponents still confronts us to-day. How can public opinion best be translated into governmental action? To the Jacksonian Democrats the solution seemed simple. Frequent and numerous elections!

The line of reasoning which brought them to this conclusion is very easy to perceive. Various aspirants for office would present themselves for election. Each would offer a somewhat different program of action. That candidate whose program most nearly represented the prevailing sentiment among his constituents would be elected. Thus public opinion and governmental action would be synchronized. Should

there appear at any time a divergence of opinion between the office-holder and the general public, the matter would be remedied at the next ensuing election. This was the theory. Without question it is in large measure sound. In fact, it constitutes the underlying justification of representative government. But a fundamental assumption is involved, to wit, that the voter will be able to differentiate between the platforms of the various candidates for office, and will select the one which most nearly coincides with his point of view. Upon the truth of this assumption has turned the effectiveness of the device.

To the early Jacksonian Democrats and their followers it seemed sacrilege even to question the soundness of the premise. It became, therefore, one of the accepted axioms of practical politics, and its application was pushed to the utmost. Consequently the principle of popular election was not confined to the policy determining officers but was extended to include others. To such a degree was the principle applied that the voter today is called upon to decide between the qualifications of candidates for coroner, veterinarian, statistician, health officer, clerk of the county court, judge of this, that and the other court, commissioner of roads, superintendent of schools, state engineer and surveyer, and what not.

There have likewise been put on the ballot for decision by the voter a hundred and one questions ranging from the prohibition of intoxicating liquors to the very important question as to whether School Dis-

trict No. 10 of Cherokee County should be allowed to issue bonds for the purchase of a new stove with which to heat the building. The wisdom of enabling the town of Greer to assess abutting property for permanent improvements has likewise been presented for solution to an entire state. Perhaps the greatest single tribute ever paid to the voters was when the housing act of the state of California, at least 75,000 words in length (considerably longer than this whole book) and exceedingly technical in character, was placed on the ballot.

Quaint and curious have been the results of this belief in the capacity of the sovereign voter. Remarkable, indeed, have been some of the elections which have been held. In Wisconsin, for example, the ballot measured thirty-five by twenty-four inches in 1904, and the Illinois ballot of 1920 was only slightly smaller. It is not, however, the mere physical size of the ballot that is ludicrous; it is the number of questions which are submitted to the voters. In so far as mere size is concerned, the Portland, Oregon, ballot of 1920, according to Professor Brooks, holds the world's record. It was forty inches long by fourteen inches wide; on it were the names of ninety-one candidates running for fifty-two offices, besides eighteen initiative and referendum measures. In this latter respect, however, it was surpassed by the San Francisco ballot of 1922, on which were fifty-two different propositions; in the former respect, by a Chicago ballot which contained, exclusive of presidential electors, the names of two hun-

dred and sixty-seven men running for fifty-three offices. "In New York City the number of elective offices in state, city and county to be filled by popular vote in a cycle of four years is nearly five hundred. In Chicago there have been six thousand nominees in a single primary election. Philadelphia, although smaller than these cities, elects more officials than either."

Nor is this the total burden imposed on the voters. Not only must the length of the ballot be taken into account but the frequency of the elections as well. One observant publicist has listed as many as nine in one city between January and November of the same year. Well may the admiration of the observer be aroused for the voter who can retain control of this complicated machinery!

What is the actual consequence of the system? Three results are apparent. The first is "blind voting" on the part of the electorate; the second, the exclusion from active politics of many able and disinterested citizens; and third, perhaps a consequence of the other two, the creation of an "invisible government," which does what the voter cannot do for himself.

How few the officers are that are voted on with intelligence, self-analysis will best reveal. Certainly it is necessary to know at least the names of the candidates for office to make an intelligent choice. And it might also be well to know something about their principles! Yet how little the average voter knows about

the aspirants on the tail of the ticket. Perhaps the point will be driven home if the reader asks himself merely the names of the occupants of the less important elective offices for which he has, in all probability, cast his ballot. It would be pushing the matter too far to ask him to name the rival aspirants for those offices, or the principles for which they stood.

Interesting, indeed, in this connection is Woodrow Wilson's analysis of the situation in Princeton. "In the little borough of Princeton where I live," he says, "I vote a ticket of thirty names, I suppose. I never counted them, but there must be quite that number. Now I am a slightly busy person, and I have never known anything about half the men I was voting for on the tickets that I voted. I attend diligently, so far as I have light, to my political duties in the borough of Princeton—and yet I have no personal knowledge of one-half of the persons I am voting for. I couldn't even tell you what business they are engaged in—and to say in such circumstances that I am taking part in the government of the borough of Princeton, is an absurdity. I am not taking part in it at all. I am going through the motions that I am expected to go through by the persons who think that attending primaries and voting at the polls is performing your whole political duty. It is doing a respectable thing that I am not ashamed of, but is not performing any political duty that is of any consequence." [1]

[1] Quoted in Beard, Charles A. *American Government and Politics*, p. 521.

That a second result of the complex ballot is the exclusion of worthwhile citizens from active participation in politics is, perhaps, not so easily seen. Nevertheless, any factor which contributes to the perversion of political parties from their primary function of presenting issues to the voters to that of an office filling machine (and this is one of them, as we shall see later) contributes to this end. Worthwhile men are rarely interested in the spoils of office. Their chief interest lies in questions of public policy. And very frequently the all-pervading discussion of the "loaves and the fishes" in "practical politics" disgusts them so that they retire from the field and leave control of the parties to others less sensitive than themselves.

The final consequence of the system has been the development of persons "who know more about the voter's business than the voter does himself." In the very infancy of our government, Hamilton, in talking about the proper number of representatives, made a remark that might well have been applied to elective officers generally. "The people can never err more," he said, "than in supposing that by multiplying their representatives beyond a certain limit, they strengthen the barrier against the government of a few. . . . The countenance of the government may become more democratic, but the soul that animates it will be more oligarchic. The machine will be enlarged, but the fewer, and often more secret, will be the springs by which its motions are directed." [1] How true this has

[1] *Federalist* (Everyman's Edition) No. LVIII, p. 300.

been one realizes when one considers the words of a conservative statesman of the type of Elihu Root:

"We talk about the government of the Constitution. We have spent many days in discussing the power of this and that and the other officer. What is the government of this state? What has it been during the forty years of my acquaintance with it? The government of the Constitution? Oh, no; not half the time, or half way. . . . From the days of Fenton and Conkling, and Arthur, and Cornell, and Platt, from the days of David B. Hill, down to the present time, the government of the state has presented two different lines of activity, one of the constitutional and statutory officers of the state, and the other of the party leaders—they call them party bosses. They call the system—I don't coin the phrase, I adopt it because it carries its own meaning—the system they call 'invisible government.' For I don't know how many years, Mr. Conkling was the supreme ruler in this state; the Governor did not count, the Legislature did not count; comptrollers and secretaries of state and what not, did not count. It was what Mr. Conkling said. . . . Then Mr. Platt ruled the state; for nigh upon twenty years he ruled it. It was not the Governor; it was not the Legislature; it was not any elected officers; it was Mr. Platt. And the capitol was not here; it was at 49 Broadway; Mr. Platt and his lieutenants. It makes no difference what name you give whether you call it Fenton or Conkling, or Cornell, or Arthur, or Platt, or by the names of men now living. The ruler of the state during the greater part of the forty years of my acquaintance with the state government has not been anyhow authorized by the Constitution

or by the law. . . . The party leader is elected by no one, accountable to no one, bound by no oath of office, removable by no one. . . . It is all wrong. It is all wrong that a government not authorized by the people should be continued superior to the government that is authorized by the people." [1]

What can be done about it? Obviously the solution is to reduce the number of decisions on the ballot to a point within the capacity of the average voter. This means that the number of elective officers must be radically curtailed. In striking contrast to ballot development in this country is the situation in England. There the anti-imperialists argued against Imperial Federation on the ground that the addition of another elective office to a ballot already burdened by the necessity of electing members of Parliament upon occasion, and three or four local officers more frequently—possibly two officers a year all told—was beyond the capacity of the average voter. Unfortunately for us our federal system of government will not permit the reduction of the burden of the ballot to this point. If the ballot were used merely for the selection of the policy determining officers, however, the situation would be vastly improved. This, in fact, is the practice so far as the Federal government is concerned. *There* only the President and the members of Congress are elected. In view of the reputed superiority of the national government over the states,

[1] Root, Elihu. *The Short Ballot and Invisible Government.*

the wonder is that the other units of government have not generally followed this example. The natural conservatism of the American people plus the vested interest of the "machine" in maintaining the *status quo* is probably the explanation of the phenomenon. Not until this condition has been brought to pass, however, can the inevitable consequences of the long ballot be avoided.

A still further shortening of the ballot can be accomplished if the elections are so arranged as to distribute somewhat evenly the number of elections which fall in the four-year cycle. If national officers only were elected in a presidential year; state officers, the following year; county officers, next; and municipal, next, the burden of the ballot would be considerably lightened.

Suggested Reading

Childs, R. S. *Short Ballot Principles* (1911)

CHAPTER III

POLITICAL PARTIES: THEIR AVOWED OBJECTS AND ATTAINMENTS

Behind the ballot box stand the political parties, likewise channels for the translation of public opinion into governmental action. That, at least, is their avowed object. Only through the presentation to the voters of a choice of issues can this be accomplished. The formulation and presentation of issues may therefore be considered the prime purpose of a political party.

How delicately attuned are these instruments to this purpose? How effective is their operation? A survey of American history alone can give the answer. If in that survey we find that issues create parties, then it must be acknowledged that the parties exist for the purpose of presenting issues to the public. If we find that parties continue to exist long after the issues which gave them birth have passed off the stage but continue by virtue of the fact that they select the most vital issues of the day and present them to the public for decision, then it must be acknowledged that they are performing the very useful function of brokerage. If, however, we discover that political parties habit-

ually set up straw issues, confuse, obscure, or even ignore existing questions of policy, a question may then be raised as to the service they perform.

That justification for raising this question exists, a review of recent political campaigns readily indicates. Almost as full as the woods are of trees are the platforms of the various political parties of pious platitudes. Statements intended to appeal to emotion and prejudice, but otherwise meaningless, are perennially proclaimed. Votes, not the presentation of issues, have evidently been very often uppermost in the minds of the party managers.

Illustrative of this is the pledge in the Democratic platform of 1880—"the Democratic party is the friend of labor and the laboring man and pledges itself to protect him alike against the cormorant and the commune." Quite as meaningless so far as the presentation of a specific issue is concerned is the Republican perpetration of a later date—"the Republican party has always been the champion of the oppressed and and recognizes the dignity of mankind irrespective of faith, color, or nationality; it sympathizes with the cause of home rule in Ireland and protests against the persecution of the Jews in Russia."

Just what stand upon suffrage the same party took in 1900 is rather difficult to determine. "We congratulate the women of America" the platform stated, "upon their splendid record of public service in the volunteer aid association, and as nurses in camp and hospital during the recent campaigns in the Eastern

and Western Indies, and we appreciate their faithful coöperation in all works of education and industry." It is also difficult to discover the issue that is raised in a campaign in which the Republicans declare "the Civil Service Law was placed on the statute books by the Republican party which has always sustained it, and we renew our former declaration that it shall be thoroughly and honestly enforced," to which the Democrats reply, "the Democratic party stands committed to the principles of Civil Service Reform, and we demand their honest, just and impartial enforcement."

These are but a few examples chosen from among many, but they suffice to show that very often for the sake of votes political parties will set up straw issues and attempt by irrelevant appeals to the emotions to catch the fancy of groups and classes of voters.

A far more serious perversion is the deliberate confusion of issues that often occurs. Of this the 1920 campaign furnished an all too striking illustration. Neither from the platform of the Republican party nor from the campaign speeches of its candidate could any definite impression be obtained concerning our entrance into the League of Nations. That we would not join the League without reservations was made quite evident, but whether the Republican party would lead the United States into the League if the Lodge reservations were secured, or whether the party was definitely committed against entrance into the League, it was impossible to determine. The party straddled

the issue so that on election day votes were cast for the Republican party in the belief that that party would lead us into the League with reservations, while other votes were cast for the same party because of exactly the opposite conviction. The practice of using "weazel words," i. e., words which suck all definiteness from a statement, is by no means confined to the Republicans, however. A survey of the platform of both parties would reveal similar situations very frequently in each.

Even more conclusive evidence that the major political parties are not functioning effectively is the fact that out of the six outstanding domestic issues of the last three-quarters of a century only three have been presented for popular decision by them. The tariff, free silver, and the income tax were party issues between the major parties. Slavery, woman suffrage (except after it was practically here) and prohibition were not. Yet this is the function of political parties —the presentation of issues.

What is the explanation of their failure to function? The answer is simple. The forces which make for the institutionalization of parties, that is, make parties ends in themselves, have perverted them from their real purposes. What are these forces? They are three in character—psychological, structural, and economic. The most important, perhaps, are the psychological. Inertia and habit on the part of the voters are responsible for the casting of as many votes as is reflection, a fact which enables party managers to discount the wishes of large numbers of their ad-

herents. The impulses of pugnacity and competition likewise come into play in the course of a campaign—very intensely in the party managers but more or less intensely in all of the party adherents—and this also contributes to intellectually dishonest practices. Victory often seems more important to the party adherents than the principles for which the campaign is fought. If necessary, principles are subordinated to victory. Almost if not quite as important as these factors is the complexity of American politics. The number of offices to be filled by popular vote produces, as we have seen before, a situation beyond the grasp of the average citizen. The result is that in great measure he turns over his duties to professional politicians. He does not select the candidates; he does not select the issues. His chief function is rarely more than the formal ratification of the work of others. Very often these "others" have a vested interest; that is, victory means economic gain to them. To the *average* professional politician victory, offices, and spoils are the *sine qua non*. Party expediency, not principle, is the guide of action. So the proper function of the party is perverted, with the result that American politics is in a great many particulars a muddle. And distrust of political action continues to grow.

What can be done about it? Again there is no panacea. Considerable improvement, however, can be made. Independence on the part of the voter both inside and outside the parties will accomplish a great

deal. The larger the number of independent voters, i. e., those who have no personal axes to grind, no vested interest in the success of their party—who participate in party councils, the greater is the probability that the party will stand for principles rather than expedients. This means, so far as the average reader of this book is concerned, that the more active he becomes in party councils, in all likelihood by so much will the situation be improved.

The second way in which the voter can contribute his share toward making the parties function properly is by independent voting. Constant punishment of parties which attempt to gain votes in illegitimate ways will alone put an end to the practice. Emphasis should be placed on the fact that a vote for a third or minor party is not a vote thrown away, for very often the major parties sin so equally in subordinating their proper functions to party interest, that if the choice lay only between them it would be between tweedledum and tweedledee. A vote for a minor party, it is true, is not likely to elect a candidate, but it is no more thrown away than are all the votes which are cast for the losing candidates. Indeed, it is probably more effective than a vote cast for these candidates. Of the twenty-eight major demands concerning matters of domestic policy which were made by the minor parties in the half century preceding 1916, only four (fiat money, direct election of the president, government ownership of railways, and the socialization of all means of production) have failed to be

enacted into law or championed by one of the major parties in a presidential campaign. Furthermore, these twenty-four demands constitute more than two-thirds of all the constructive domestic legislation advocated in the platforms of the two great parties during that era.

Civil service reform; woman suffrage; the direct election of senators; a department of labor; the initiative and referendum; the recall; proportional representation; the restriction of Chinese immigration; the regulation of corporations; a postal savings bank; the parcels post; the reform of the inelastic currency; regulation of railways and telegraphs; social insurance (workmen's compensation); the right of combination; amelioratory legislation; the prohibition of child labor; a graduated inheritance tax; the revision of the Homestead Act; the prohibition of intoxicating liquors; the suppression of polygamy; the arbitration of labor disputes; the free and unlimited coinage of silver—these were the demands which were made. And at least to the extent of seeing them written into the platform of a major party, these were the results which were accomplished. In view of these facts one can hardly say that a vote for a minor party is a vote thrown away.

Another and probably more effective method of compelling the parties to respond to the wishes of public opinion has been developed in the organization of "pressure groups." These organizations vary widely in character and effectiveness. Most spectacular among them has been the Anti-Saloon League. The

American Federation of Labor, the United States Chamber of Commerce, the League of Women Voters, the American Legion, the Federation of Women's Clubs, the League for the Protection of American Liberties, the Citizens Union, city clubs, and a thousand and one bodies of a similar character may be cited, however, as examples of the phenomenon. In all of them there is a dynamic nucleus of determined men or women who know what they want and are resolved to get it. Around this driving force is gathered a group of adherents, some fanatically attached to the cause, others less so, gradually shading off into those who, although apathetic to the movement *per se*, are supporting the organization for this or that reason.

With this group of votes always at their disposal, the leaders of the association proceed to bargain, and just as a district leader uses the strength of his constituency to advance his personal fortunes, so the strength of the "pressure group" is used to advance the fortunes of its cause. It should be remembered, however, that the strength of a "pressure group" does not depend entirely upon its immediate voting power, but depends also upon the strategic position the organization occupies in relation to the formation of public opinion; that is, a "pressure group" such as a chamber of commerce has a strength greatly beyond its numerical membership; its financial resources, its control (through its membership) of the local press, and its respected position in society, all combine greatly to extend the scope of its influence. The Anti-

Saloon League also occupies an advantageous position, since it has access to practically every evangelical pulpit in the country.

The tactics of the last-mentioned organization may well serve to illustrate the technique of the "pressure group" in its most highly developed form. Aside from the activity that was needed to raise money, the energies of the League have been confined to three channels—propagandizing, lobbying, and campaigning. The evils of intemperance and the iniquities of the saloon were set forth so often in many localities that sheer repetition converted many whom reason could not reach. In their "educational" work, however, they differed not a whit from numerous rival propaganda agencies.

It was in effectively organizing their adherents to exert pressure upon the legislatures and party organizations that the Anti-Saloon League won its right to be called the foremost "pressure group" of the country. By maintaining lobbyists at vital points the League not only placed at the disposal of the "drys" in official position the advice of master tacticians, but maintained a "whip" to rally the adherents of the dry cause in times of crisis. Whenever "dry" legislation was in danger, or a forward thrust was to be made, there would descend upon the legislators under the able guidance of the "whip," a flood of postal cards, letters and telegrams sufficient to call to the attention of even the wettest of the wet the fact that there were among

his constituents a considerable number of voters vitally interested in prohibition.

Such tactics are common to all "pressure groups," although the skill of the lobbyists and the popular sentiment they can rally vary exceedingly. The very presentation of a cause to the legislature in itself guarantees that the issue will receive greater consideration than it otherwise would, and popular clamor through post card and telegram undoubtedly causes many a legislator to consider carefully the political consequences of his decision, and very often to yield to the side he believes to be supported by public opinion.

In active campaigning, in swinging votes to or from particular candidates, the Anti-Saloon League has developed its technique beyond that of the usual "pressure group." Here and there, wherever there was the slightest chance of success, the strength of the Anti-Saloon League was thrown. It was not always possible to secure a wet and dry issue, but in all cases the candidate who was *least moist* received the assistance of the League. Thus by lending its support to this party and that, extracting concessions wherever possible, the League was finally able to change the complexion of our legislative bodies and ultimately to secure the passage of the Eighteenth Amendment.

The older practice of confining the fight to one political party, and by a series of compromises finally

writing a plank into the party platform, has been somewhat eclipsed by this newer method which fights on all fronts at once. And although this second method of presenting issues to the public does not preclude the use of the first, i. e., independent activity within a party organization, nevertheless it must be admitted that as means of advancing issues which the major parties attempt to avoid, the "pressure groups" have been found to be very efficient and will probably be resorted to more and more.

This, then, is the sum of the whole matter; independence within party councils, and independent voting, will go a long way toward making the parties function once again; but as long as they refuse to do so it *is* possible to advance issues through the activity of "pressure groups."

Suggested Reading

Merriam, Charles E. *The American Party System.* (1922)

Brooks, Robert C. *Political Parties and Electoral Problems.* (1923)

Ray, P. Orman. *An Introduction to Political Parties and Practical Politics.* (1922)

CHAPTER IV

THE PERSISTENCE OF THE MAJOR PARTIES

Wherein lies the explanation of the persistence of our two major parties? Is there a fundamental difference between them? That they do not take sides upon all important questions has already been indicated. But is there a fundamental cleavage paramount to the issues neglected? The majority of our people without question accept the theory that such is the case. Just what the difference is, however, has not been settled. There are those who maintain that men are by nature progressive or conservative, and that the factor of temperament is all-important in determining party alignment. According to this theory, one party attracts all the venturesome; the other, all those who prefer the *status quo*. Unfortunately for the explanation, however, an examination of the existing party alignment reveals a progressive and conservative wing in both parties. The Republican party, as one journalist picturesquely put it, is composed of cavalry and artillery.[1] The former, led

[1] Hard, William, Democratic Infantry, *New York Nation*, June 18, 1924.

by Robert LaFollette,[1] is continually making raids and sorties of a most spectacular character. The artillery, however, moves slowly. Some of the placement guns do not seem to move at all. The Democrats, so this writer maintained, were the infantry. But even so, not all the infantry occupy front line trenches. There are sappers like Wheeler, and sharp-shooters like Reed, and then there are those who, like Underwood, stay very close to the artillery. Interesting as the theory is, it is evidently not substantiated by the facts.

Then there are those who see in the tariff the vital distinction. And in support of their contention, they point to great tariff controversies of the past. Nor can the array of dates fail to impress the observer.[2] Nevertheless, numerous as they are, the frequency with which the tariff has been only a minor issue at an election makes one hesitate to contend that it is the great underlying difference. So, too, with the money question. Although, generally speaking, the Democratic party has inclined toward an expanded currency and the Republican party toward a contracted one, the fact that the question has been paramount only once in recent years, in 1896, disposes of any claim it may have to being the ever-present subject of controversy.

[1] Since this was written Senator La Follette has bolted the Republican Party.

[2] 1816, 1824, 1828, 1832, 1833, 1846, 1857, 1860, 1870, 1872, 1875, 1883, 1888, 1890, 1894, 1897, 1908, 1909, 1913, etc.

The State rights issue is still frequently advanced as the solution of the problem. Historically, it is claimed that the Democrats have stood for the maintenance of the *status quo* in our governmental relations; the Republicans, for the growth of nationalism. And certainly such was the case in the 50's and 60's. To-day, however, the positions of the two parties are somewhat reversed. It is the Southern Democracy which is championing the cause of grants-in-aid, the device by which national authority is being rapidly expanded, and the Republican Northeast which is opposed.[1] Thus we find "another beautiful theory murdered by a gang of brutal facts."

More plausible than any of the explanations so far presented is the thesis which maintains that there has persisted throughout our history an underlying economic cleavage of which the tariff, the money issue, and State rights are but outward manifestations. On the one side of this issue have stood those whose chief interests were those of "big business" and industrial development; on the other side, those who believed in the supremacy of agriculture and the rights of man. The Federalists were the early industrialists, representing the "big business" of their day. Opposed to them were the Anti-Federalists, who championed the cause of agriculture and with it, singularly enough, individual liberty. Nomenclature has changed. To-day the Republicans and Democrats occupy the field. But, generally speaking, the alignment is the

[1] See page 98.

same. The Republicans represent "big business"; the Democrats champion the rights of the "small fry." This at least is the contention of the thesis. But even here some very embarrassing questions can be raised. If the Democratic party represents the interests of agriculture, why has it not made inroads into the Republican strongholds of New York and Pennsylvania, situated as they are in the rural areas of the respective states? Why does the banner of Republicanism usually float over the Middle West? Even here an adequate explanation has not been found.

The flaws so apparent in the theses put forward have led many to maintain that no great underlying difference exists. They believe that the explanation of the persistence of the two major parties lies in the fact that they have acted as brokers and at different times have taken different sides of various questions—the tariff, money, state rights, etc. Those who hold this view believe that although no paramount issue running throughout our history is to be discovered, nevertheless there exists at any given time a vital distinction between the parties—and that this is the explanation of their persistence.

Still others, however, fail to see an adequate explanation of the phenomena here. They incline to the belief that the factors which have institutionalized the parties are chiefly responsible for their persistence. Certainly the psychological factors, inertia, habit, sympathy and imitation, so they maintain, make for the *status quo*. They explain in great measure those

factors which are commonly denoted by the term "historical influences." The persistence of the Solid South, for example, can in part be attributed to them. Their influence, needless to say, is not confined to any one section of the country. In so far as the impulses of pugnacity and competition cause victory to be placed above principle, they unquestionably contribute to a like perpetuation. The long ballot, as has been pointed out, has placed our political machinery very largely in the hands of professional politicians. These, in turn, see in the existing organizations surer roads to office and spoils than in the shifting sands of party realignment or independent action. Add to this the fact that the newspaper press of the country is almost wholly in the hands of those who have either party affiliations or a vested interest in the maintenance of the *status quo*, and the explanation seems pretty complete. Two other factors, however, contribute. One is the enormous expense necessary to initiate and organize a new party. The other is our presidential or gubernatorial form of government. The existence under our form of government of one office of outstanding power, the occupant of which can very frequently determine questions of policy, makes that office the desideratum of all contending factions. Since that office is attainable only by a majority vote,[1] the coalition of all possibly har-

[1] Some qualification of this statement is necessary. It is possible for the election to go to the House, in which case a coalition of the various factions is possible after election. Such circumstances, however, are exceptional.

monious groups becomes imperative. Hence the two great parties are formed. Hence they persist, for only through membership in one or the other is it possible for any group to obtain the influence or patronage so greatly desired.

Suggested Reading

Merriam, Charles E. *The American Party System.* (1922)

CHAPTER V

"PRACTICAL POLITICS"

"Government is force. Politics is a battle for supremacy. Parties are the armies." So said a distinguished Senator from Kansas some years ago. That there is a large element of truth in his statement, the intricate organization and highly developed tactics of both major parties would seem to indicate. In no other country are the parties so well integrated. In no other country is the work so assiduously carried on. Precinct, district, city, county, state and nation are but units in an organization which operates with almost military precision.[1] And drill goes on week in and week out. Always alert, the parties are like armies sleeping under arms.

A foreigner might exclaim: "What a wonderful country, in which people are discussing affairs of state all the year round!" But the work of the political organization is not, as we have seen, the discussion of public affairs: it is recruiting. How little part political argument plays in this is astounding. Although the methods of Tammany Hall cannot be used by the professional politician, without modification, outside

[1] See chart, p. 58.

of New York City, yet adaptions of Tammany's tactics are everywhere used. It is not irrelevant, therefore, to pause to examine the Wigwam's methods. Nowhere can a franker or more vivid statement of them be found than in the words of George Washington Plunkitt, for forty years a Tammany leader. His description of the method by which he got his start and the tactics by which he held his district are sufficiently interesting in themselves to justify extensive quotation. He says:

"I can best explain what to do to succeed in politics by tellin' you what I did. After going through the apprenticeship of the business while I was a boy by working around the district headquarters and hustlin' about the polls on election day, I set out when I cast my first vote to win fame and money in New York City politics. Did I offer my services to the district leader as a stump speaker? Not much. The woods are always full of speakers. Did I get up a book on municipal government and show it to the leader? I wasn't such a fool. *What I did was to get some marketable goods before going to the leaders.* What do I mean by marketable goods? Let me tell you:

"I had a cousin, a young man who didn't take any particular interest in politics. I went to him and said: 'Tommy, I'm going to be a politician and need a following; can I count on you?' He said: 'Sure, George.' That's how I started in the business. . . . I soon branched out. Two young men in the flat next to mine were school friends. I went to them, just as I went to Tommy and they agreed to stand by me. . . . And so it went on like a snowball rollin' down a hill. I worked the flathouse

that I lived in from the basement to the top floor, and I got about a dozen young men to follow me. Then I tackled the next house and so on down the block and around the corner. Before long I had sixty men back of me, and formed the George Washington Plunkitt Association.

"You ought to have seen how I was courted and petted then by the leaders of the rival organizations. I had *marketable goods* and there was bids for them from all sides, and I was a risin' man in politics." [1]

The striking fact brought out by the quotation is the total absence of political discussion in the gathering of a following, and in holding his district Plunkitt seemed to have had even less use for the advocacy of principles.

"For instance, here's how I gather in the young men. I hear of a young feller that's proud of his voice, thinks he can sing fine. I ask him to come around to Washington Hall and join our glee club. He comes and sings, and he's a follower of Plunkitt for life. Another young feller gains a reputation as a baseball player in a vacant lot. I bring him into our baseball club. That fixes him. You'll find him working for my ticket at the polls next election day. Then there's the feller that likes rowin' on the river, the young feller that makes a name as a waltzer on his block, the young feller that's handy with his dukes—I rope them all in by giving them opportunities to show themselves off. *I don't trouble them with political arguments. I just study human nature and act accordin'.*" [2]

[1] Riordin, W. I. *Plunkitt of Tammany Hall,* p. 14.
[2] Riordin, *op. cit.,* p. 47.

Social work, recreational and philanthropic—this is the cement that holds together such political organizations. Political clubs are the only clubs for the masses, and around them centers all the affection the college boy has for his fraternity or the well-to-do for their luxuriously furnished lounging places. But the political club is more than a recreational center. It is an employment agency, through which the deserving may obtain jobs. And as Plunkitt sees it, that is a very important part of the politician's work. "When the voters elect a man leader," he says, "they make a sort of contract with him. They say, although it ain't written out: 'We've put you here to look out for our interests. You want to see that this district gets all the jobs that's comin' to it. Be faithful to us, and we'll be faithful to you.' " [1] But the district club is more than that. It is, perhaps, the greatest philanthropic center in the average city. To some extent this is a thing of the past in cities that have very efficient charitable associations, but not so the country over. Favors are still sought and obtained at political headquarters.

The question immediately arises why men who so far as their actions indicate are not particularly interested in matters of public policy, should devote so much time to the maintenance of political organizations. The answer to this can likewise be found in the philosophisings of Plunkitt. There exist in politics many "opportunities" for those who are seeking

[1] Riordin, *op. cit.*, p. 68.

personal gain, and these "opportunities," legitimate and illegitimate, are the explanation. The existence of approximately two and a half million political offices, with a pay-roll attached thereto of more than $3,000,000,000 a year, is in itself a considerable attraction. And when one remembers that about three-fourths of the states, even a larger percentage of the counties, and all but three hundred of the cities, do not even have the protection of a civil service law on the statute books, it becomes apparent that these offices are in large measure "rewards for the faithful."

In the purchase of supplies there is also an "opportunity" for a "rake-off," and again in the placing of contracts for public purposes. Political influence is not a disadvantage to the contracting firm that bids for work in connection with semi-public projects. The contractor who can expedite the obtaining of permits, who can secure the waiving of technical rules of construction, has a slight advantage over the firm which can offer no such inducement; which may, indeed, bring with it the enmity of "the powers at city hall" and all the obstructions that enmity may involve.

Tax manipulation is both possible and profitable. Appreciation will often be shown by a large property holder for a favor of this character. The custody of public money likewise affords those motivated by self-interest an excellent opportunity for self-enhancement. A considerable difference may very well exist between the interest the state receives for its

funds and the interest the money actually earns, and nobody be the wiser. Perhaps the greatest "opportunity," however, consists of simply "being on the inside." Let Plunkitt explain: "My party's in power in the city and it's going to undertake a lot of public improvements. Well, I'm tipped off, say, that they're going to lay out a new park at a certain place. I go to that place and I buy up all the land I can in the neighborhood. Then the board of this or that makes its plan public and there is a rush to get my land, for which nobody cared in particular before.

"Ain't it perfectly honest to charge a good price and make a profit on my investment and foresight?" [1]

The protection of the underworld and opportunities for extorting bribes might also be cited, but they probably do not constitute a very important element in the situation.

"Opportunities" are not confined to the field of administration alone. Perhaps the most scientifically constructed bills that pass through our legislatures are the appropriation bills carrying "pork"; scientifically constructed, from the point of view of satisfying the desires of the largest number of legislators. With these may be placed the bills carrying grants of one kind or another, franchises or concessions for this or that.

Even in the judiciary, "opportunities" abound. Receiverships carrying with them emoluments of one hundred thousand dollars a year have not been un-

[1] Riordin, *op. cit.*, p. 4.

known. And the fees collected through refereeships are impossible of computation.

This by no means exhausts the "opportunities" which exist for the practical politician. The list is almost inexhaustible. *The fact that these "opportunities" exist does not mean, let it be said, that all or even a majority of men in politics are there for that reason; but it does mean that there have been and will continue to be attracted to the game those who find the "opportunities" their chief incentive.* This in turn means that tactics entirely irrelevant to questions of public policy will continually be resorted to in order to obtain a following, and that those who possess these *"marketable goods"* will continue to sell them to the highest bidder.

What can be done about it? It is obvious that wherever possible, the "opportunities" should be lessened. If civil service reform lessens patronage—and it does—civil service reform should be adopted. If a budget system eliminates "pork"—and it helps—it should be adopted. If the short ballot lessens political obligations in the sinister sense of that term—and it will—it should be adopted. It must be admitted, however, that in the last analysis men, not laws, rule the country, and that only by inducing a superior type of individual—interested in principles rather than "opportunities"—to participate in political activity can any great improvement be made. It should further be remarked that this is a never-ending task, and not until there has been aroused in those who

are disinterested a sense of public spirit equal to the self-interest of the professional can we expect to change materially the present situation.

Until then, the best that can be hoped is to keep a check on the self-interest of the professional politician, eliminating wherever possible the most obnoxious. How can even this be done? What mechanism can eliminate even the worst of those in politics or lessen their influence? Thirty-nine states have answered—"The Direct Primary"!

The direct primary is an election held among party members for the purpose of selecting candidates. The names of those desiring to secure the nomination are placed upon the primary ballot by means of petitions signed by a number of party members. A petition is usually required to prevent the ballot from being cluttered with those who command no following in the party. The names so presented are submitted to the members of the party on primary day. The aspirants receiving the greater number of votes become the candidates of the party.

Such, in broad outline, is the system in the majority of the direct primary states. It was introduced because of the tide of resentment that rose against the old convention system. Undemocratic, boss-controlled, and corrupt was the verdict of experience upon the nominating convention. The new system was installed to cure those evils. What is the verdict of experience upon it? A review of contemporary conditions indicates that *in a measure* the direct primary has accom-

plished its objects. Corruption, while not extinct, nevertheless is much diminished. Although the boss is not altogether an unknown figure at present, he is by no means as dominant as he once was. His fiat is no longer law. It may be, and often is, true that his advice is followed, yet his recommendations are themselves modified by the realization that they will be subjected to the approval of the rank and file of the party. In one sense the direct primary has transformed him into a leader. Where indiscretion has ruled and the organization has set up *very poor candidates*, the mechanism of the direct primary has made possible to a degree never before conceived the entry of independents, who have more than once captured the nominations.

If the new plan has these accomplishments to its credit, why has it been partially repealed in New York? Why has it everywhere been under fire? Quite naturally, for the very reason that it has limited the power of the "practical politician." But various charges have been made against it by these and other agencies. First, it is said that the primary introduces a plethora of candidates. An analysis of primary ballots, however, shows that *rarely* have more than three aspirants arisen within any party for any major nomination.

Second, it is said that nominations are gained by pluralities instead of majorities. By and large, this is also false, although specific instances may be found to the contrary. It is just as likely to be true that

the president of the United States will be elected by a plurality as it is that the nominee for any important state office will be so chosen at the primary. Such an attack is an attack upon our system of elections in general and should not be confined to the primary.

Third, it is said to have produced party discord and made for party disintegration. This really means that the dominant clique within the party finds it more difficult to boss the party than before, *an excellent reason for maintaining the primary.*

Fourth, it is said that the men chosen under the direct primary are inferior to those chosen under the convention system. Wilson, Cummins, Lowden, Johnson, Sproul, Pinchot and La Follette, all chosen under the direct primary, seem to give the lie to this contention.

Fifth, it is said that it has not aroused popular interest. It must be admitted a majority of the rank and file of the voters do not participate even under the direct primary. Figures for the entire country are not available. In New York, however—and the situation is probably the same elsewhere—even in years when interest in political matters ebbed lowest, the number voting was twenty per cent larger than the number that participated under the convention system; while in other years there has been an increase of more than one hundred per cent.

Sixth, it is said that the direct primary is more expensive to aspirants for office. Statistics bearing upon the point are not available, but why it is cheaper to convert the same number of voters when they vote in-

directly through the convention system than when they vote directly at the polls, is difficult to see. These are the major charges and as regards them the case can certainly be dismissed for want of evidence.

Technical problems still exist as to which is the best type of primary. The chief problem, however, in connection with nominations is no longer how to perfect the machinery, but how to interest the better-class voter, how to bring the disinterested, the public-spirited citizen to active participation in politics.

Suggested Reading

Kent, Frank. *Great Game of Politics.* (1923)

Brooks, Robert C. *Political Parties and Electoral Problems.* (1923)

Ray, P. Orman. *An Introduction to Political Parties and Practical Politics.* (1922)

PARTY ORGANIZATION

National (8)
Committee

Senatorial (7)
Committee

Congressional (6)
Committee

State Central (5)
Committees
in all states

District Committees (4)
in various Representative,

Judicial, and Administrative Districts

County Committees (3)
in each of the 3065 counties
(City committees are independent of the county in a few large cities.)

Ward, School District, Township (2)
Town and City Committees

Precinct Committeeman or Committee (1)
in each of the 100,000 precincts
in the United States

Chart I. Political Organization

This chart is in large measure an adaptation of a chart in Robert C. Brooks' *Political Parties and Electoral Problems.*

(1) The country is divided into small geographical areas containing between three and four hundred voters. These are the precincts, and they constitute the smallest units of party organization. The precinct committeeman or committee is in charge of party activity in this area.

(2) The existence of these committees varies from locality to locality. Where they exist, they have more or less supervision of the work in the territory designated.

(3) The county is a unit of political organization everywhere. And everywhere the county committeemen are charged with the duty of carrying it for the party.

(4) Where these district committees exist they are usually of minor importance.

(5) State central committees are to be found in every state. They generally have as their function the maintenance of harmony in the party and the general effectiveness of the state machine. They usually conduct the state campaigns, becoming in presidential years units under the general control of the national committee.

(6) The chief function of the Congressional committee, composed as it is of members of the lower House, is to aid in the Congressional campaigns.

(7) Of a similar nature is the Senatorial Committee save that its energies are concentrated upon elections to the Senate.

(8) The national committee is chiefly concerned with the election of the president. For an account of its activity, see pages 60–74.

CHAPTER VI

THE ULTIMATE GOAL OF BOTH PARTIES: "THE CHOICE OF THE PRESIDENT"

The ultimate goal of all political parties is the election of the president. By no means, however, is this the only office which the parties hope to fill. The mayor and the city council, the governor and the state legislature are all exceedingly important if the party is to attain a position of power, not to mention the members of the House of Representatives or the Senate or the host of petty officers who must be chosen. Into the intrigues surrounding each of these, space will not permit us to go. The selection of the chief magistrate must occupy our attention. At the time of this writing the opening guns of a presidential campaign have already been fired. Gossip and speculation concerning presidential possibilities pervade the news columns. Skillful press agents for this or that aspirant are quietly securing the insertion of human interest stories in the Sunday supplements, portraying their employers in their most appealing moods. Gradually the suggestions as to potential aspirants are becoming more definite. Speeches and interviews designed to test the strength of the respective candi-

dates have already been released. And where the "feelers" have disclosed sufficient strength the candidate has stepped forth with an announcement that "his hat is in the ring."

Meanwhile, chambers of commerce, newspapers and other organizations the country over have been conducting "drives" to bring one or other of the conventions to their city. The National Committees have considered the inducements offered by this and that city, and this year have decided upon Cleveland and New York, respectively, as the places of meeting. The call for the meeting has also been issued. The Democratic party retains the traditional representation, two delegates for each representative and senator returned by the state to Congress; thirty-four extra members of the convention being divided among the territories and possessions. The peculiar situation of the Republican party in the South, in certain sections of which it is known only by reputation, has caused this party to abandon the traditional apportionment of delegates and to adopt one more nearly representative of party strength.[1] Having completed the arrangements for the convention, the National Committee temporarily retires.

The center of the stage is now occupied by the aspirants for nomination. In some states they actively

[1] It should be pointed out that the Democratic position in Vermont, Pennsylvania and other "rockribbed" Republican states is very similar to that of the Republicans in the South and that the problem of securing representation proportionate to the party strength is by no means confined to the latter party.

campaign to secure delegates pledged to their support; in others, "gumshoe" methods are used.

Delegates are actually chosen in three main ways—through the primaries, through conventions, and through state committees. Seventeen states select their delegates through the primaries; twenty-nine through state conventions; and four through state committees. Two general types of primary exist—the unpledged direct primary and the presidential preferential primary. The two are not mutually exclusive, for the first is concerned with the election of delegates,[1] whereas the second deals with the expression of preference by the voters between the aspirants for nomination.[2] The preferential feature takes two forms, direct and indirect. Where the indirect preference primary exists, candidates for election as delegates may, but need not, indicate the aspirant for nomination whom they prefer. The direct preference primary permits the voter to indicate directly on the ballot which of the aspirants for nomination he inclines to support.[3]

Although a number of difficult problems still remain to be worked out in connection with the primary, it has

[1] The direct primary is found at present in *Ala., Cal., Fla., Ill.* (district delegates only), *Mass., Mont., Neb., N. H., N. J., N. Y.* (district delegates only), *N. D., Ohio, Ore., Pa., S. D.,* and *W. Va.*

[2] The Presidential preference primary is found in *Cal., Fla., La., Ill., Me., Mass., Mich., Mont., Neb., N. J., N. C., N. D., Ohio, Ore., Pa., S. D., Vt., W. Va.,* and *Wis.*

[3] The primary requirements of any particular state can be found by writing to the Secretary of State of the particular state and obtaining a copy of the election and primary laws.

nevertheless the great advantage of bringing the fight out in the open. "From the very start candidates and their supporters are under public observation, so that the 'gumshoe stalking of delegates' and the secret buying of convention votes are at all events made more difficult."

As the days for the choice of delegates roll around, the aspirants and their supporters become more and more active. In those states having the presidential preference primary an intense campaign often takes place. Frequently, however, the "organization" prefers to go to the national convention fancy free, believing that it can thus obtain more patronage and concessions for its state from the successful aspirant. In such a case it is not unusual for it to select a man of local prominence and pledge support to him, knowing full well that he will never be taken seriously by the nation and that the "organization" will be in fact free to trade and bargain.[1] By cleverly appealing to local pride it can very often defeat in the local primaries all efforts to secure pledged delegations by even the most popular of national figures. This is in great part the reason for "favorite sons," most of whom are unknown beyond the boundaries of their own states.

These tactics can only be defeated by the admirers of this or that prominent aspirant, who persuade the machine to endorse their candidate, or else, if that is impossible, split the organization and with the aid of

[1] There were thirty-four aspirants mentioned for the Democratic nomination this year; seventeen were put in nomination.

the independents put across a slate of their own in the primary. A still more difficult task is to defeat a united machine by an appeal to the independent party vote. The fact that there are often several prominent aspirants in the field, splitting the non-organization vote among them, makes this last means almost, if not altogether, impossible, especially where the convention system of electing delegates exists. Only the most intense campaigning on the part of the independents can "turn the trick."

By the time the pre-convention campaigns are over, the country has a fair idea who will be the leading candidates at the convention. Gossip and speculation, rife before, now increase a thousandfold. The country waits for the conventions to assemble.

At the appointed time delegates come streaming into a city already thronged with the curious, already decorated with streamers and banners and flags, already studded with the "headquarters" of this aspirant and that. Each state delegation sets up its headquarters in a hotel and trumpets its arrival to the assembled throngs by signs and posters, and sometimes with the blare of a brass band. There it is that leaflets revealing the most intimate details of the aspirant's glorious life, and badges bearing his name, his likeness and his slogan, are distributed to all comers. There it is that interviews, exhortation and persuasion abound. There it is that the bargain which will determine the presidency may be struck.

The convention assembles. The chairman of the

National Committee takes the chair and the machinery for selecting a presidential candidate is in operation. Prayer is offered; the Star Spangled Banner sung; the official photograph of the convention taken; the call for the convention read; a temporary chairman proposed and elected; and temporary rules are adopted. After the "keynote speech" the appointment of committees takes place. There are five great committees: credentials, rules, permanent organization, resolutions, and the national committee. All, with the exception of the last, are chosen by the state delegations at the convention, one member from each state. The membership of the national committee may be chosen at this stage of the proceedings or later; it may be chosen by the state delegation, or it may be that the state representative has already been chosen at the polls by the party voters on the primary day.

Usually the credentials committee is ready at the opening of the second day of the convention. It goes over the temporary roll prepared by the national committee and renders final decision in all contests save in those rare cases when the convention itself intervenes.

The report of the committee on credentials is usually followed by the report of the committee on permanent organization and then by the committee on rules and order of business. If the committee on resolutions is ready the platform is then considered; if not, reminiscences and song fill the interval. When the platform has been prepared it is brought in. It may either go through with slight comment and great ap-

plause, or it may stir up controversy to the point where it threatens to wreck the convention.[1] After the platform has been settled, resolutions are in order.

Then begins the alphabetical roll of the states—and nominations. If a state has no nominee of its own, it yields to another state, maybe far down the alphabet. Nominating speeches, seconding speeches, applause and hisses fill the hall. The peroration of a nominating speech calls forth a demonstration, spontaneous or artificial, which may last for minutes or for hours.[2] The proceedings of the Republican convention of 1920 record the following:

"Governor Allen concluded his nominating speech at 10:26 A. M., and the concluding mention of the name 'Leonard Wood' was the signal for uproarious applause. A member of the Kansas delegation seized the Kansas banner and followed by other members of that and other delegations proceeded to march around the hall, delegates carrying flags, pictures of Leonard Wood, and blue and red feathers marked 'Wood' while thousands of others, similarly marked, rained down from the roof of the convention hall.

"At 10:45 A. M. the Permanent Chairman rapped for order, but as it brought forth a fresh volume of cheering, he resumed his seat.

"At 11 o'clock A. M. the Permanent Chairman rapped again for order, the cheering having in large measure sub-

[1] The fight over the League of Nations and Klan planks in the recent Democratic convention was very nearly of this character.

[2] The demonstration for Governor Smith in the recent Democratic convention lasted ninety minutes.

sided, but he was again greeted with a great volume of applause and cries of 'We Want Wood! We Want Wood!'

"At 11:04 A. M. the cheering having in great measure subsided, the Permanent Chairman rapped for order, and at 11:05 A. M. the majority of the delegates were again in their seats, but the galleries were still enthusiastically applauding."

And thus the business of the convention goes on, resembling more than anything else revival meetings of the Holy Rollers or "pep rallies" of a student body. Language, the excess of which seems ludicrous when read in calm reflection, is quite the usual thing. The tenseness of the moment seems to call for the use of nothing save superlatives. The concluding paragraph of a nominating speech made in support of a certain gentleman who received as many as 13 votes in the convention will serve to illustrate.

"He was born in North Carolina. He draws from Southern blood and Southern soil and Southern skies the generous chivalry of a nature that abhors cant and hypocrisy and falsehood, and feels the stain like a wound. Thirty-four years ago he came, a poor, barefooted, penniless boy, to the rugged soil of Connecticut, where breathing its free air, listening to its free speech, and taught in its free school, he laid the foundation of a manly character and life in principles which are as enduring as Connecticut's everlasting hills. . . .

"The fierce light that beats against a presidential candidate will explore his record in vain, and he will come

out brighter from the blaze. His life is gentle, and the elements are so mixed in him that nature might stand up, and say to all the world 'This is a man'. . . . If he is nominated, all elements can support him, for he is a radical conservative and a conservative radical; a friend of Garfield and a friend of Grant. Sir, if he should be nominated, it would ensure you Connecticut by a 10,000 majority. It would weld together with fervent heat the dissensions in New York. It would blaze through the State of Garfield, that daughter of Connecticut, more beautiful than her mother.

"It would carry the Southern States, for he is the only candidate that this party would have named who was born on Southern soil. It would please all parties and all professions, for he is a lawyer, editor, soldier, statesman, orator. It would take the people, for he is what the people all love—God Almighty's noblest work, an honest man. Such a nomination would sweep from the storm-beaten coast of the Atlantic to the Golden Gate of the peaceful sea. With him elected in the vigour of his life and the plenitude of his powers, beloved at home and respected abroad, with our free institutions and our imperial domain, we should need no Bartholdi statue standing at the gate-way of commerce with uplifted torch to typify the genius of liberty enlightening the world, but our history under a Republican President, administered upon a Republican policy, would of itself bear witness to all times, and to all people, that America is the greatest, freest, most prosperous country upon which the sun in his course has ever looked down." [1]

[1] Ostrogorsk, M. *Democracy and the Organization of Political Parties,* vol. II, p. 266.

Even better are the concluding paragraphs of John Wescott's speech in 1916.

"Sons of America keep unsullied the sacred shrine of peace, through whose portals will yet pass arm in arm the crowned head and the humble peasant in silent worship of God.

"Out of the ruins and suffering of the present conflict will arise a temple of justice whose dome will be the blue vault of heaven; its illuminants the eternal stars; its pillars the everlasting hills; its ornaments the woods and bountiful fields; its music the rippling rills, the song of birds, the laughter of happy childhood; its diapason the roar of mills and the hum of industry; its votaries the peoples of the earth; its creed, on which hangs all the law and the prophets, 'Love thy Neighbor as thyself.' Above its altars in ineffaceable color will live eternally the vision of its artificer. . . .

"Therefore, my fellow countrymen, not I, but his deeds and achievements; not I, but the spirit and purpose of America; not I, but the prayers of just men; not I, but civilization itself, nominates to succeed himself to the presidency of the United States to the presidency of 100,000,000 free people, bound in impregnable union, the scholar, the statesman, the financier, the emancipator, the pacificator, the moral leader of democracy, Woodrow Wilson." [1]

Well may the question be raised: "Is an institution which creates an atmosphere in which men go wild over language that only writers of mining pros-

[1] *Proceedings of the Democratic Convention,* 1916.

pectuses could hope to approach or oil promoters expect to equal, the best machinery that can be devised for selecting a presidential nominee?"

It must be remembered that while the oratory and demonstrations are working the convention up to a white heat, there are here and there, on the floor of the conventions and at the "headquarters" throughout the city, seasoned politicians who are thoroughly "hard boiled," from whom all this falls like water from a duck's back. In great measure it is these political managers that determine the nominations. Only rarely does the convention get away from them. Rear and paw and tug as the delegates may, they usually stand hitched until they feel the guiding hand upon the reins. It is in the back rooms of the headquarters where the "bosses" are bargaining and trading that the final outcome is determined. No better statement of this can be found than that made by Harry Daugherty, campaign manager for Harding. He said, doubtless you recall:

"At the proper time after the National Republican Convention meets some fifteen men, bleary eyed with loss of sleep and perspiring profusely with the excessive heat, will sit down in seclusion around a big table. I will be with them and will present the name of Senator Harding to them, and before we get through they will put him over." [1] And they did.

Hardly are the speeches finished and the first roll call begun than the trading is under way, and with

[1] *New York Times* June 13, 1920 1:7.

every ballot it grows more and more intense. Slight shifts appear here and there indicating individual delegates who have grown tired of waiting for the guiding rein, but not until whole states begin to go can anything startling be expected to happen. When at last it becomes apparent that the final bargain has been struck, a stampede to the bandwagon begins, each delegation hoping to gain something for itself by joining the merry throng. The final vote is made unanimous. The nomination of the Vice-President then takes place, and the work of the convention is practically over.

The speeches of acceptance of the nominee may in one sense be considered the opening of the campaign, although the latter does not reach white heat until October. Propaganda is the core of the campaign. Literature, speech-making, and house to house canvassing are the methods chiefly used. Through newspapers, periodicals, pamphlets, and posters the appeal is carried to the voter. The printing presses of the nation work overtime. Banners and buttons combine to turn the decision. Assembly halls and autos alike furnish rostrums for speakers. Megaphones and microphones are commandeered, and inside and outside the haranguing goes on. It may be that the day of the parade and barbecue is fast passing, but in certain parts of the country they still maintain their appeal. Just as effective, if not more so, is the silent work of the political visitors, making calls here and there, ingratiating themselves and their cause by this little bit

of flattery or that, winning a vote by an appeal to vanity or to prejudice. And the "gumshoe" campaign is becoming more and more popular.

Finally election day rolls around, and fourteen million voters march steadfastly to the polls to indicate their choice of a president. One million more are brought up by the party workers as they "get out the vote." Thus the judgment of the nation is registered, i. e., if the votes are correctly counted. "To-day the people cast their votes; to-night I count them," is a jest that has by no means lost its meaning in the United States. The organizations still "count 'em out" in many a district.

Be it remembered, however, the vote has not been a vote for the president, but a vote for electors. Each state is entitled to as many presidential electors as it has representatives and senators in Congress. In legal theory they constitute the wise, the virtuous and the judicious of each state, and in legal theory they may cast independent votes. In practice, however, they are mere automatons registering the will of the people, balloting as they are pledged, and transmitting a record of their votes to the President of the Senate as directed by the Constitution.

Though the electoral college has been reduced to innocuousness in its actual working, nevertheless at any time it may cause a defeat of the will of the majority. All the electoral votes of a state go to the successful party no matter how slight its lead. It may easily

occur that a party may carry the country by a majority but lose the electoral college through the loss of certain critical states by slight margins. For example, it may well be that the Republican party at some election will carry Pennsylvania by 500,000 votes, yet lose New York by 1,000 and in so doing lose the election because of the large number of New York electors. Whether such a dangerous vestigial organ as this should be allowed to remain is well worth consideration.

This, however, is but one of many questions which arise in connection with the election of the president. Some of the most outstanding this brief review suggests are: How can I influence my party to nominate the candidate in whom I believe? What machinery for the selection of delegates to the national convention is the fairest? Is the convention itself conducive to the selection of the best candidate? How can it be improved? What can I do to elect the candidate I prefer? How can I see to it that the popular judgment is not frustrated by a miscount? Should the electoral college be abolished?

Suggested Reading

Ostrogorski, M. *Democracy and the Organization of Political Parties,* vol. II. (1908)

BOOK TWO

THE LEGAL FRAME OF GOVERNMENT

CHAPTER VII

FRAMING THE CONSTITUTION

The year 1781 saw three and one half million people scattered along the Atlantic seaboard from New Hampshire to Georgia. Nine-tenths of them were farmers, the majority of whom were well satisfied with existing political institutions although there was discontent with prevailing economic conditions, since the period was one of deflation. The Continental currency had in fact become practically worthless, with the result that there was less money in the country than there had been even in Revolutionary days. The scarcity of the commodity naturally made it more valuable, for money, like everything else, becomes increasingly valuable with scarcity. This meant, of course, that its exchange value was high and farm produce was correspondingly cheap, which in turn produced an inevitable reaction against the economic situation on the part of those adversely affected. But at no time was there widespread feeling in the rural areas that a change in the *form* of government was necessary.

How came it, then, that after only eight years' trial the Articles of Confederation were scrapped and a new Constitution was adopted? From dissident groups

come all movements that lead to change, and to the influence of such groups may be traced the transformation of the Articles of Confederation. There were several classes in the country, numerically small, but with a prestige extending far beyond their actual numbers, who were in a state of protest. First, the commercial interests. The fact that there existed no superior body to compose the quarrels between the various states had already led to a situation in which New York, New Jersey, and Rhode Island were on the point of blows, and a tariff war was in progress. The fact that the Federal government had no power to compel the states to abide by its agreements with foreign nations had caused Europe generally to look askance at us and discriminate against our trade at will.[1] The absence of a standard currency likewise complicated business. Not only were some of the states issuing bank notes, but upon the authority of the states hundreds of banks were steadily adding to the difficulties.

The monetary situation affected also the banking classes. The success and threatened success of the "soft money men," that is those who desired to inflate

[1] A glimpse of the European reaction to us can, perhaps, be caught from a quotation from the *English Public Ledger* of 1786. "Anarchy their King—laws disregarded—Justice driven from their dominions—roguery encouraged by their wild assemblies—a people disunited in all—their shipping rotting in their neglected ports—their Empire crumbling to atoms—treacherous —wretched and poor—harassed by the Aborigines—unable to avenge or protect themselves, they are insulted by all—they are a people not to be trusted—a people laughed at and despised by all nations—an example of rebellion and ingratitude!!!"

the currency, was alarming the vested interests generally. An inflated currency meant a *decline* in the purchasing power of money, a prospect not at all pleasing to those with money out at interest. Holders of governmental securities likewise found little to admire in a government too weak financially to redeem its pledges.

Akin in feeling were the speculators in Western lands. So long as the government was unable to protect life beyond the Alleghanies, so long would their anticipated profits be delayed. Even the slavocracy, always fearful of a slave revolt, would have felt more comfortable with a more powerful central government.

From these groups, powerful in influence, but by no means constituting a majority of the country, the movement to remedy the defects in the Articles of Confederation arose. They were, perhaps, the first pressure group in our history. The "vision of national unity which underlies the Constitution was after all the vision of an aristocracy conscious of a solidarity of interests transcending state lines." [1]

It was a conference between delegates from Maryland and Virginia to adjust some commercial difficulties on the Potomac, which developed into a convention at Annapolis, and then into the Philadelphia Convention of 1787. The purpose of this latter convention was to devise alterations necessary "to render the Federal Constitution adequate to the Exigencies of Union." All the states except Rhode Island participated.

[1] Corwin, E. S. *John Marshall and the Constitution,* p. 126.

Rhode Island seemed to fear a revolution. And well she might, for the opening speeches boded ill for the Federal Constitution. "The confederation," said Randolph, "was made in the infancy of the science of constitutions, when the inefficiency of requisitions was unknown; when no commercial discord had arisen among states; when no rebellion like that in Massachusetts had broken out; when foreign debts were not urgent; when the havoc of paper money had not been foreseen; when treaties had not been violated; and when nothing better could have been conceded by states jealous of their sovereignty." [1]

Washington likewise let it be known that he did not believe that tinkering with the document would be sufficiently radical. "It is too probable that no plan we propose will be adopted," he said. "Perhaps another dreadful conflict is to be sustained. If, to please the people, we offer what we ourselves disapprove, how can we afterward defend our work? Let us raise a standard to which the wise and the honest can repair; the event is the hand of God." [2]

And so with almost Cromwellian piety, the Articles of Confederation were dispatched.

The convention was practically unanimous in the belief that the central government should be strengthened—and it is easy to understand why it was, for of the fifty-five members in attendance every one was a member of one or more of the dissident groups.

[1] Fiske, John. *Critical Period of American History,* p. 235.
[2] Fiske, *op. cit.,* p. 232.

But they were by no means agreed upon the degree of centralization necessary, nor upon the amount of popular control desirable. Two proposals chiefly occupied the convention. They have been labeled the *Virginia plan* and the *New Jersey plan*. The former, the work of Madison, provided for a single executive chosen by the national legislature and ineligible for a second term. Congress was to consist of two houses, the lower elected in proportion to population or wealth, the upper to be elected by the lower in like proportions. Then there was to be a national judiciary. For two weeks this plan was discussed in the committee of the whole, and obtained the approval of the majority of the delegates.

It was becoming apparent by this time, however, that a determined minority existed, composed of a bloc of small states. Eighteen days after the Virginia plan had been introduced, Patterson of New Jersey, representing this bloc, introduced a substitute plan. The chief difference between the two plans lay in the fact that the latter retained the confederate form of organization. The control was to rest in one house in which the states were to be represented as states. It was over this difference the most bitter fight of the convention took place.

"Let the smaller colonies give equal money and men and then have an equal vote. But if they have an equal vote without bearing equal burdens, a confederation upon such iniquitous principles will never last long." Such was the declaration of Franklin, and

the representatives of the larger states re-echoed his words with vigor. To this Patterson of New Jersey replied that "there was no more reason that a great individual state contributing much should have more votes than a small one, contributing little, than that a rich individual citizen should have more votes than an indigent one." [1] Bedford of Delaware was even more emphatic: "Pretences to support ambition are never wanting. The cry is, 'Where is the danger?' and it is insisted that although the powers of the general government will be increased, yet it will be for the good of the whole; and although the three great states form nearly a majority of the people of America, they never will injure the lesser states. *Gentlemen, I do not trust you.* If you possess the power, the abuse of it could not be checked, and what then would prevent you from exercising it to our destruction? . . . Sooner than be ruined, there are foreign powers who will take us by the hand. I do not say this to threaten or intimidate, but that we should reflect seriously before we act." [2]

The air in the convention was tense. The fate of America was suspended by a hair. Franklin, though a free thinker, proposed the invocation of divine guidance. The motion was defeated, according to tradition, by Hamilton's objection to seeking foreign aid, and the fear that dissension might be suspected by the public. On June 29th *the large states won the princi-*

[1] *Op. cit.*, p. 247.
[2] *Op. cit.*, p. 249.

ple of popular representation in the lower house. On July 2nd, Baldwin of Georgia, who had been voting with the large states, shifted his vote. This, with the transfer of the entire vote of Maryland to the side of the small states, broke the deadlock, and the Great Compromise was effected—*the Senate was to represent the states in their sovereign capacity.*

Tempers did not cool down immediately, but the crisis was passed. Into the further details of the convention's work space does not permit us to go. One fact only need be emphasized. No member was satisfied with the final document, nor did any believe that the product of their labors would endure long without radical change. Hamilton found consolation when he signed the final draft in believing that it would be changed and improved as the years rolled by. The Constitution was a "bundle of compromises," so acknowledged by the members of the convention, and was thought of in no other light until the aphorism of Gladstone that it was the "greatest work struck off by the brain of man" was taken seriously by the American public.

When the convention had finished wrangling, the document was referred to a committee on detail, which performed important service, and later to a committee on style. Thus the Constitution was completed.

Completed but not adopted! The Articles of Confederation could be amended only by a unanimous vote. Not the slightest possibility existed that the new proposal would be so endorsed. The convention, there-

fore, provided that when nine states had ratified the new Constitution it should go into effect. Although this action may have been justified, it was without question illegal. The further change in the manner of amending, ignoring as it did the state legislatures and submitting the matter to specially elected conventions, was even more revolutionary.

Not even in nine states, however, was the Constitution adopted without a fight. There took place, says Fiske, "such a war of pamphlets, broadsides, caricatures, squibs and stump speeches as never yet had been seen in America. Cato and Aristides, Cincinnatus and Plain Truth were out in full force. What was the matter with the old confederation? asked the Anti-Federalists. Had it not set us free from the oppression of England? . . . There was government enough in the country already. This Philadelphia convention ought to be distrusted. Some of its members, such as John Dickinson and Robert Morris, had opposed the Declaration of Independence. Pretty men these, to be offering us a new government! . . . Some members had gone home (from the convention) in a huff; others had refused to sign a document fraught with untold evils to the country. And as for the other members of the convention, there was Roger Sherman, who had signed the Articles of Confederation, and now was trying to undo his own work. What confidence could be placed in a man who did not know his own mind any better than that? Then there were Hamilton and Madison, mere boys—

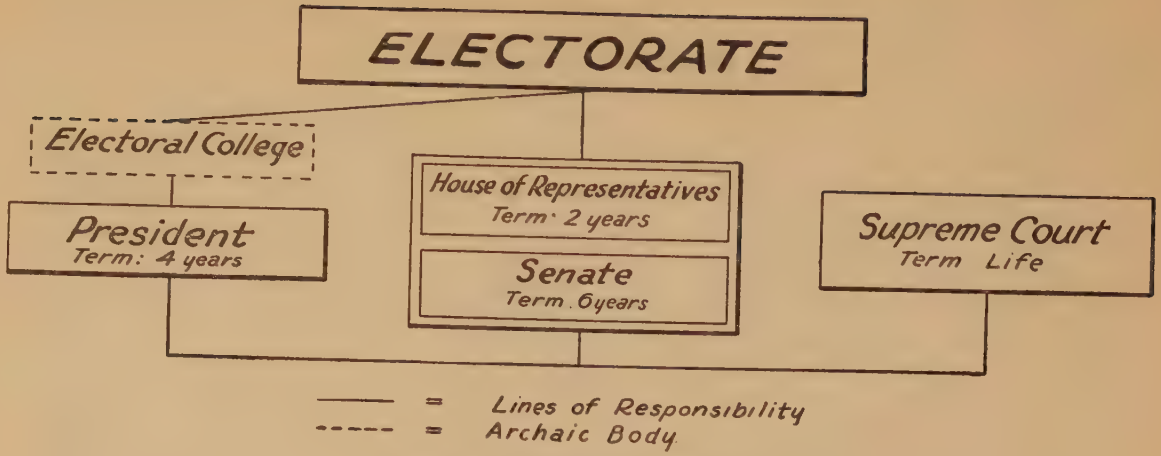

Chart II.—The Federal System

and Franklin, an old dotard, a man in his second childhood. And as for Washington, he was doubtless a good soldier, but what did he know about politics? So said the more moderate of the malcontents." [1]

"This government is founded in sin, and reared up in iniquity, the foundations are laid in a most sinful breach of public trust, and the top stone is the most iniquitous breach of public faith and I fear if it goes into operation, we shall be justly punished with the total extinction of our civil liberties," exclaimed Treadwell. And Treadwell's sentiments were widely held throughout the country.[2]

By dint of much persuasion, however, and by virtue of exceedingly skillful political tactics, the Federalists finally carried the election. The ship of state was launched. The Constitution was adopted.

The fathers of the Constitution believed their work imperfect. How comes it, then, that after nearly one hundred years this "bundle of compromises" persists almost intact? Between 1787 and 1924 the British Constitution has been changed to such an extent that George III would now have difficulty in recognizing it. France during the same period has had at least nine constitutions. Italy, Germany and Austria have likewise found it necessary to adopt one or more. Meanwhile, we in the United States continue to use, with little change, a document drawn up almost one hun-

[1] *Op. cit.*, p. 312.

[2] Quoted in Miner, C. E. *Ratification of the Federal Constitution in New York*, p. 115.

dred and forty years ago to meet the needs of three and one-half million people. Political conceptions have changed, economic conditions have changed, the population has increased thirty times over; yet on the surface at least slight change has been made in the Constitution. What is the explanation?

It may be that the difficulty of the amending process has something to do with it. There are four ways of changing the fundamental law of the United States. An amendment may be initiated by a two-thirds vote in both houses of Congress and ratified by the legislatures in three-fourths of the states; it may be initiated by a constitutional convention called by Congress upon the petitions of two-thirds of the states, and ratified by conventions in three-fourths of the states; it may be initiated by Congress and ratified by conventions; or vice versa. The first, however, is the only method that has ever been used. Compared with the amending clause of the Article of Confederation, this seemed liberal indeed. And without doubt the members of the Constitutional Convention believed they were demanding all that they could possibly hope to receive from states swollen with local pride, fearful of erecting a Frankenstein in the form of a central government. Nevertheless, it is the most difficult amending process in the world to-day. It is not, therefore, irrelevant to ask whether this feature of the Constitution is compatible with prevailing political thought.

Approximately one-half of the population of the

United States lives in thirteen states, and yet these states have very little more power over the amendment of the fundamental law of the land than do the thirteen least populous states in which live less than six million people. Popular representation in the lower house gives the more populous states a slight advantage in initiating amendments but not one whit more power in any other regard. Three million people properly located can stop the passage of a Constitutional amendment demanded by one hundred million. This at least is a possibility under our amending system; needless to say, it is not a probability.

Although exact figures are not available, it is safe to say that three thousand proposals for change have been introduced into Congress. Of these, but twenty-six have secured the necessary vote for initiation, and but nineteen have been ratified. In reality, however, only eight changes have been made, for the first ten amendments were passed as one, as were also the thirteenth, fourteenth and fifteenth. Only eight changes in one hundred and forty years! Actually, however, radical changes *have been made* in our form of government. We have developed from an aristocracy into a democracy; we have developed from a confederation into a nation. How has it come about? In three chief ways—custom, statutory elaboration, and judicial interpretation. One example of custom will suffice. The choice of the President was to be placed in the hands of the few, the rich and the well born, or failing that, to be thrown into the House of

Representatives. The electoral college was to thwart democracy. *In fact,* however, the electors have been reduced to automatons registering the popular will.

Perhaps even more fundamental to the welfare of the country are the great administrative departments, yet only the merest mention of their existence is to be found in our Constitution. They have been set up and adapted to changing circumstances at the dictation of Congress. Administrative devices utterly unknown to the founders of the republic have been evolved. Not least among these is the Interstate Commerce Commission, certainly as fundamental as the vice-presidency. Here, perhaps, better than anywhere else, can be discovered the secret of the successful operation of the Constitution. The absence of detail from the instrument of government has left broad discretionary powers in the hands of Congress, which have enabled that body to adapt the machinery of government to changing needs.

The third way in which our organic law has been changed is by judicial interpretation. Despite the fact that the Supreme Court is a body sworn to uphold the Constitution, it has, when its actions are viewed over a long period of years, interpreted the language of the document, not in the light of the historic grant, but in the light of the circumstance which confronted it. Perhaps the best illustration of this is the Insular Case. The language of the sixth amendment is fairly clear:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

And yet in the case of Hawaii *v.* Mankichi, the Supreme Court decided that in Hawaii neither indictment by a grand jury nor trial by a petit jury was necessary. In Downes *v.* Bidwell, the court divided the Constitution into fundamental and non-fundamental parts, and applied only the former to the government of territories, reserving to itself the right to determine in specific cases what is fundamental and what is not. No such radical change in our governmental system can be found among the nineteen amendments.

These extra-legal methods of amendment have made possible the continued operation of the government under a Constitution intended for very different conditions. Without constant change by these other methods, radical alteration in our organic law would have been absolutely necessary. In fact, it is difficult to believe that the document would not have been scrapped altogether.

The question naturally arises: Is the policy we are pursuing the wisest? Is it more statesmanlike to

maintain a Constitution incompatible in its rigidity with the spirit of the times, and to accomplish by indirect methods, with all the inefficiency and uncertainty that these imply, that which other countries accomplish directly and frankly, or to align ourselves with the other nations whose organic laws are more easily adapted to changing circumstances?

Suggested Reading

Schuyler, Robert Livingston. *The Constitution of the United States.* (1923)

Farrand, Max. *The Framing of the Constitution.* (1922)

Beard, Charles A. *An Economic Interpretation of the Constitution.* (1921)

CHAPTER VIII

THE GROWTH OF NATIONAL POWER

It was a government of limited powers which the year 1789 saw established in the United States. To it was given the administration of certain broad functions. The control of foreign relations was surrendered into its hands, as was also the task of national defense. Adequate sources of revenue were provided, and limited supervision over commerce and business was made possible. The execution of these powers was divided among the various branches of the federal organization.

To the President, chiefly, was given the conduct of *foreign relations*. He was made the spokesman of the nation. His power to appoint ambassadors and consuls and to negotiate treaties, as well as to receive the appointees of foreign nations, made his control in this regard extensive indeed, but not exclusive; for the necessity of the Senate's ratification of both appointments and treaties gave that body a great restraining influence. And the fact that the assent of Congress was made necessary to the passage of appropriations or to a declaration of war, inevitably placed a portion of the control in the House of Representa-

tives. Viewed as a question of the relationship of central to state authority, however, *the Federal Government in this sphere was made supreme.*

The powers of *national defense* were likewise distributed among the different branches of the Federal Government. The President was made commander-in-chief of the army and navy, and also of the state militia should that body be called into federal service. Congress, in turn, was given the right to raise armies and navies and to make rules for their government, as well as to erect arsenals, magazines, and forts. It was also granted power to make rules for the organization and maintenance of state militias, and for calling them into action to execute the laws of the Union, suppress insurrections and repel invasions. The states, however, retained the power of appointing officers and the authority to train their militia in accordance with federal rules. This, indeed, was the only limitation placed on federal power in this connection, save that no appropriation for the army could extend beyond two years.

The original grant of *taxing power* to the central government was, perhaps, as radical a change as any which the constitutional convention proposed, although it was by no means as broad in its scope nor as exclusive as either of the foregoing. Congress was given the power to lay and collect taxes and duties throughout the United States. Such levies, however, were required to be uniform and, in the case of a direct tax, to be laid in proportion to the population. (This

latter provision was somewhat modified with the passage of the sixteenth amendment.)

Less broad was the grant which gave the federal authority control over *commerce and business*. The national legislature was empowered to regulate commerce with foreign nations, and among the several states; to establish a uniform law on bankruptcy throughout the country; to coin money and regulate the value thereof—a matter excluded from state jurisdiction; to establish post offices and post roads; to promote the progress of science and the useful arts by copyrights and patents; and to fix the standards of weights and measures. Formidable as this list of powers seems, the superficial observation of any business man will reveal to him that, literally interpreted, the grant of power is limited, indeed. And yet compared with the powers conferred by the Articles of Confederation, it was a most radical alteration.

These, then, were the powers given to the Federal Government by the Constitution of 1789. *These and these only!* "The powers not delegated to the United States by the Constitution nor prohibited by it to the states, are reserved to the states respectively, or to the people." So did the tenth amendment seal the grant. *Thus* were the relations of the Federal Government to the states established.

It is very interesting to note how this relationship has been changing. Confined by its constitutional grant within a comparatively narrow sphere, the central government has gradually by this method

and that been extending the scope of its activities.

Some slight broadening of its powers has occurred through the amendments. The thirteenth gave Congress the right to interfere with state action in regard to slavery. The fourteenth greatly extended the veto power of the federal judiciary over state action in that it provided that "no state shall make or enforce any law that shall abridge the privileges and immunities of citizens of the United States; *nor shall any state deprive any person of life, liberty or property without due process of law;* nor deny to any person within its jurisdiction the equal protection of the laws." It was not, however, until the sixteenth amendment was passed that any additional *positive* power was granted the central government. Permission "to lay and collect taxes on incomes from whatever source derived, without apportionment among the several states" was a distinctly positive grant of powers. Much more radical was the expansion of federal activity consequent to the passage of the eighteenth amendment.

This entire expansion is comparatively small, however, when compared with the enormous growth of federal power that has come through other channels. One of the greatest of these is the judicial doctrine of *implied powers*. The first great case to establish the principle was that of McCullough *v.* Maryland. Briefly, the facts of that case are as follows: Congress had incorporated a bank of the United States, a branch of which had been established in Baltimore. Maryland had subjected all banks not chartered by its

legislature to a stamp tax upon their note issues. McCullough, the cashier of the bank, had ignored the statute and been prosecuted accordingly. He was appealing the decision on a writ of error. One of the first questions to come up in the trial concerned the authority of Congress to establish a bank. Nowhere in the Constitution is there an express reference to such an institution. Chief Justice Marshall, however, sustained the right of Congress so to act by evolving the theory of "implied powers," that is, that the Constitution did not enumerate in detail all possible actions of Congress, but merely the ends for which the Federal Government was established. "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited but consist with the letter and spirit of the Constitution are constitutional."

From this beginning the judicial expansion of the Constitution has been enormous. Federal meat inspectors find themselves stationed in slaughter houses of the big meat companies in Chicago by virtue of the fact that Congress has been given power to regulate interstate commerce. The line of reasoning that has made possible this development has been this: Congress has power to regulate interstate commerce. Therefore, Congress has power to prevent the use of interstate commerce in a way injurious to the people. It follows that it has the right to prevent any injurious food products from being carried in such commerce.

Therefore, it has the right of inspection. Furthermore, it has the right to determine how that inspection shall be carried on, and the right to enact rules and regulations for the enforcement of its object. Thus a simple grant of power to the national government to regulate commerce between the states has grown by implication to mean the right of the national government even to send federal inspectors into the abattoirs where the cattle are slaughtered.

By a similar process of reasoning the Federal Government's jurisdiction over navigable waters enables the national authorities to purchase forest reserves. The postal clause empowering Congress to establish post offices and post roads has been the means of putting in jail swindlers in oil stocks and other bogus enterprises. One will search the Constitution long without finding even a remote reference to such procedure. The pure food and drug acts, the meat inspection acts, the federal trade commission act, the anti-trust acts, the federal reserve act, the rural credits acts, the Mann white slave act, the Harrison narcotic drugs act, the federal water power act, all exist by virtue of powers found in the Constitution only by implication. How far this doctrine has been developed can be seen from the last-named act. Federal control over navigable waters has been extended so that we find New York complaining that it covers water-power projects on practically all streams in the state, large and small, except brooklets. Somehow there seems to be some inconsistency, for where water power is developed

there must be falls, and where falls exist navigation is likely to be slight, at least on the falls themselves.

Without question the expansion of federal power through implied powers has been greater than in any other single way. It is not, however, the whole story. Simply by virtue of its power to expend money, with seemingly *no* provision in the Constitution upon which to hang its expenditures, the Federal Government has still further broadened the scope of its activities. It is difficult to see, even with the most liberal interpretation of the Constitution, upon what provisions a great part of the recent development rests. Upon what clause of the Constitution, for example, can the appropriation of money for the eradication of the boll weevil, or the cattle tick, be constitutionally justified? Is the power to fix weights and measures constitutional warrant for laboratory experimentation on leprosy? Where is education mentioned in the organic law or in the nineteen amendments thereto?

How great has been the expansion of federal influence by this method, is difficult to say. Certainly it is true that the bureaus and divisions established by virtue of only the appropriating power are to-day spending more money than did the entire Federal Government in the days of its founders.

A recent development of this type of expansion has taken the form of Federal grants-in-aid. A grant-in-aid is a subsidy by the Federal Government with certain strings attached. For example, to those states which in 1923 would duplicate the grant, the Federal Govern-

ment appropriated $125,000,000 for roads. The money was to be divided among the states, one-third according to rural population, one-third according to area, and one-third according to post-road mileage. The roads could be built, however, *only in accordance with plans and projects approved by the Bureau of Roads in the Federal Department of Agriculture.* Thus although the states have doubtless been benefited, the determination of questions of policy in this particular has, in a measure at least, been transferred from the state capitals to Washington.

The policy of grant-in-aid has thus far undergone only slight development. Besides the Federal Aid for Roads Act, already mentioned, the Smith-Lever Law (carrying an appropriation of $6,080,000 for the encouragement of agricultural extension work in 1923) followed the same principle. The vast majority of the states accepted its provisions and a further portion of state sovereignty was transferred to the Federal Government. The Smith-Hughes Act, carrying an appropriation in 1923 of $4,623,000, designed to stimulate vocational education, operated on similar lines. Of a similar nature was the Industrial Rehabilitation Law, appropriating $1,034,000 for the current year. Even greater was the supervisory power demanded and obtained by the Chamberlain-Kahn Act. In it the Federal Government practically dictated the passage of particular laws regarding venereal disease before the subsidy could be obtained. The last step in this development has been the Sheppard-Towner Act, which

is designed to promote maternity and infancy hygiene.

Those who advocate the system of grant-in-aid do so upon two grounds, administrative and economic; and upon the same two grounds is it opposed. Its proponents maintain that by means of this administrative device it is possible for the Federal Government to bring the entire country to a fairly high standard of efficiency and to stimulate lines of development beneficial to the people. They point out that very few functions of government, health, education, agriculture, road building or what not, remain a matter of mere local or state concern, but that every one of them reacts upon the nation. An epidemic of plague in Florida is now a serious matter for Philadelphia and New York. The loss of the cotton crop in Mississippi would cause hardship to the mechanics of Boston. Hence they firmly believe that activity on the part of the national government is entirely justified. In the system of grant-in-aid they see the device which will accomplish their purpose. Everywhere will federal influence be felt. Those regions too poor to maintain an efficient administration, or to develop on modern lines, will find themselves enabled to do so through the federal subsidy.

There are those, also, who view the development from the point of view of redistributing the wealth of the country. They are not Socialists but consider themselves realists in economics. Their interpretation of the present system of distribution of wealth is somewhat as follows: The farmer, laborer, manu-

facturer, distributor, and capitalist, all contribute something of value to the production and distribution of goods. The return each group gets for the effort it expends (*above a certain minimum of subsistence*) depends upon the relative strategy of the position the group occupies. Of all the groups engaged in the production of goods those least strategically situated, so they believe, are the farmers and laborers. Thus, these economists maintain, the return to these classes above the minimum of existence is little indeed. With this philosophy it is quite evident that huge incomes are credited, not to the value of the contributions made by their recipients to society, but to the strategic positions which enable them to take "what the traffic will bear." There is only one institution more strategically located than these vested interests, so these economists argue, and that is the government. Hence they support the system of grant-in-aid, for they see in it a partial remedy, at least, for the injustices of distribution under the present economic order. The system of grant-in-aid does have this effect in so far as federal revenue is derived through the income tax, which is levied upon the principle of ability to pay.

The fact that such is the effect of the system has caused the vested interests in the Northeast to protest against it vehemently. Already the exalted doctrine of state rights has been aroused from its slumbers. "Is it just," they ask, "that New York should pay 26.65 per cent of the income tax, Pennsylvania 11.05 per

cent, Massachusetts 6.45 per cent, and see that money used primarily to benefit other sections of the country?" Grants-in-aid, needless to say, are not given to the states in proportion to the taxes they pay, but roughly according to their needs. Hence the point is well taken. One fact, however, should be noted. The *average* New Yorker, or the *average* citizen of any state, does not pay one whit more in taxes nor receive back one whit less return than does the inhabitant of any other state. The only persons who are taxed more heavily are those whose incomes are above the average. The great fortunes and those only!

The opponents of the system point also to certain potential dangers. Grants-in-aid, they say, stimulate centralization. Centralization breeds bureaucracy. Bureaucracy contains elements of danger. The history of Germany alone is sufficient to substantiate their point. So the argument goes.

Two questions very naturally arise. Has centralization been wise? Is a further development along the lines of grant-in-aid desirable? To the first the answer is: It has been inevitable. As local problems have developed a national character, some organ of government has had to arise to cope with them. To the second question the answer is only to be found in the consideration of a great many facts, too many to be set forth in a book of this character.

Suggested Reading

Beard, Charles A. *American Government and Politics* (1924)

CHAPTER IX

THE SPHERE OF THE STATES

The onward march of national power creates the impression that the states are becoming relatively insignificant cogs in our governmental machinery. And certainly it is true that a large portion of the growth of nationalism has been at the expense of the states. Hemmed in on one side by the loss of power accruing to the federal government, and on the other by certain specific prohibitions imposed by the federal constitution and the amendments thereto, the states, superficially at least, seem to have decreased in importance. We have already analysed the grants of federal power; it might be well, therefore, to examine the specific limitations on the states.

The first deal with the taxing power. They may be briefly summed up. No state may lay an import or export duty, or a tonnage tax save with the consent of Congress. Furthermore, no state may tax an instrumentality of the federal government. Such was the implication the courts read into the Constitution in the case of McCullough *v.* Maryland. As a corollary to this has been established the principle that the federal

government may not in its turn tax a state instrumentality. It is this *implication* which is to-day necessitating a constitutional amendment to solve the problem of tax-exempt securities.

A second group of limitations deals with interstate commerce. In general, it can be said that a State may not interfere with such commerce. In fact this principle has been pushed so far that the Supreme Court has even set aside a schedule of intra-state rates on the ground that it constituted an indirect interference with interstate rates. On the other hand, incidental interference with interstate commerce is frequently permitted. The speed of trains in cities may be regulated; their stopping at specific points on Sundays may be prohibited, etc. In these cases, the courts have generally taken the attitude that where the police power of the state is honestly used for the protection of the health, morals and safety of its citizens, it is paramount, even though in fact it does interfere with interstate commerce. Should the State legislature, however, attempt to gain for its citizens through the exercise of this power some commercial advantage, the statute without question would be declared null and void.

"No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of no-

bility." Thus were a number of miscellaneous items disposed of in the federal constitution.

With the exception of the last clause of the section quoted, these provisions are chiefly concerned with inter-governmental relations. In great measure, they attempt to clarify the grant of power to the federal government, making exclusive in certain particulars some of the power thus given. Equally important from the point of view of the state are those clauses which create a "sphere of anarchy" into which state action may not go. Of this nature is the last clause of the section quoted above. More important, however, is the opening paragraph of the Fourteenth Amendment. "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without *due process* of law; nor deny to any person within its jurisdiction the equal protection of the laws." This provision differs from the others both in the breadth of its sweep and in the exceedingly great discretion it reposes in the court. Particularly is this true of the "due process" clause. In fact, when one attempts to analyse the decisions of the Supreme Court in interpreting this phrase, about the only conclusion one can reach is that that august body has understood the language of the Constitution to mean that no state may deprive any person of life, liberty or property except in a manner and under such circumstances as shall seem to the Supreme Court reasonable and fair.

This does not mean, however, that the caprice of the court is the sole factor in its interpretation. There has grown up a body of precedent and tradition which the court inclines to follow and is very loath to disavow. In procedural cases, particularly, are the lines of precedent fairly definite. And in this field comparatively little check has been placed upon the power of the state. Due process, said the court in one case, is "a course of legal proceedings according to those rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights." No such freedom, however, is enjoyed by the states in the field of substantive law. There precedents are fewer and individual judgment holds greater sway. For example, under the police power the state has the right to regulate the rate which a utility may charge. Such regulation may not, however, deprive the company of a fair return on its property. But what is a fair return? The company, if left to itself, could earn possibly as much as fifty per cent on its investment. To the man on the street, who is accustomed to a return of four per cent, or slightly more, this seems exorbitant. Where should the line be drawn? Evidently, somewhere between the two figures. Just where, is largely a subjective matter. And in large measure the decision will turn upon the personality of the judges on the bench. To a great extent this same equation enters into the determination of the constitutionality of almost all regulatory legislation of whatever nature:

child labor, minimum wages, working hours, trade union relations, insurance acts, or what not.

These constitute the main limitations on the states, though by no means all. Nor do they constitute nearly all the limitations upon the state governments. The state and the state government, be it remembered, are two different things. The former is a geographic and legal entity comprising within it the entire social organization of its inhabitants; the latter, on the other hand, is but the agency through which the state functions. Upon the state government, as well as the federal, rest the historic restrictions of the bills of rights. These we will discuss more fully in a later chapter. There is also in most state constitutions a section setting up the framework of government; another dealing with state finances; a third, providing for the control of economic interests; a fourth, outlining a social and educational program; and finally an amending clause. In at least one sense, all these provisions are limitations upon the state governments, since it is beyond the power of those governments to change them. And although it must be said that they are not limitations upon the *power* of the state, they are limitations upon its *activity*.

Nevertheless, despite all these limitations, one has but to skim over the names of the administrative agencies of the average state to be impressed with the enormous domain over which the state rules,—to realize the tremendous task the American state has undertaken. To carry on its activities adequately, the

offices of "state engineer, superintendent of insurance, superintendent of banks, commissioner of excise, superintendent of public works, commissioner of education, commissioner of agriculture, forest, fish, and game commissioner, commissioner of health, state civil service commission of three members, prison commission of seven members, superintendent of prisons, superintendent of public buildings, state architect, tax commission of three members, commissioner of labor, lunacy commission of three members, board of charities, manager for a large variety of charitable and reformatory institutions, fiscal supervisor of state charities, water supply commission, land office commission, canal board, commission for the canal fund, state board of canvassers, equalization board, classification board controlling wages of labor for state employments, state historian, miscellaneous reporter, quarantine commission, superintendent of weights and measures, commission for the promotion of uniform legislation in the United States, an agent for the Indian tribes, voting machine commission, board of pharmacy, embalming board, state fair commission, statutory consolidation board, highway commission, and public service commission—to say nothing of some other minor independent commissions and offices," [1] must be maintained.

The bulk of the administrative work of the state, however, has been delegated to its various subdivisions. To such an extent has this been the case that

[1] Beard, Charles A., *op. cit.*, p. 579.

one is almost inclined to believe that the chief function of the state is not administrative but policy determining. And impressive, indeed, is it to run through the index of a state code. Two hundred pages of finely printed, double columned type are necessary to index the New York Code. At least thirty thousand items are involved. Merely to list them would require a book at least ten times the size of this one. This gives some idea of the compass of the state's activity. An intelligible view of the nature of the task can perhaps be obtained by a glance through the table of contents of one of these codes. That of the Empire State follows:

1. Constitution
2. Arbitration Law
3. Banking Law
4. Benevolent Orders Law
5. Business Corporations Law
6. Canal Law
7. Civil Rights Law
8. Civil Service Law
9. Condemnation Law
10. Conservation Law
11. County Law
12. Debtor and Creditor Law
13. Decedent Estate Law
14. Domestic Relations Law

14a Drainage Law

15. Education Law
16. Election Law
17. Employers' Liability Law
18. Executive Law
19. Farms and Markets Law
20. General Associations Law
21. General Business Law
22. General City Law
23. General Construction Law
24. General Corporation Law
25. General Highway Traffic Law
26. General Municipal Law

27. Highway Law
28. Indian Law
29. Insanity Law
30. Insurance Law
31. Judiciary Law
32. Labor Law
33. Legislative Law
34. Lien Law
35. Membership Corporations Law
36. Mental Deficiency Law
37. Military Law
38. Navigation Law
39. Negotiable Instruments Law
40. Partnership Law
41. Penal Law
42. Personal Property Law
43. Poor Law
44. Prison Law
45. Public Buildings Law
46. Public Health Law
47. Public Lands Law
48. Public Officers Law
49. Public Service Commission Law
49a Public Works Law
50. Railroad Law
51. Real Property Law
52. Religious Corporations Law
53. Salt Springs Law
54. Second Class Cities Law
55. State Boards and Commissions Law
56. State Charities Law
57. State Finance Law
58. State Law
59. State Printing Law
60. Stock Corporation Law
61. Tax Law
62. Tenement House Law
63. Town Law
64. Transportation Corporations Law
65. Village Law
66. Workmen's Compensation Law
67. Unconsolidated Laws

Thus, although relatively the sphere of the state has grown smaller, the state and the state government still play an exceedingly important part in the ma-

chinery of our government. In fact, actually the state government is more important today than it has ever been before.

Suggested Reading

Beard, Charles A. *American Government and Politics.* (1924)

Holcombe, A. N. *State Government in the United States.* (1920)

Mathews, J. M. *Principles of American State Administration.* (1920)

CHAPTER X

CHECKS ON TYRANNY

Historical circumstance, and not political philosophy, explains the growth of most governmental institutions. Nevertheless, the constitutions of the United States and of the various states have embodied in them several distinct theories of government. Not least significant are those designed to check the growth of tyranny in whatever form it may appear. First, is the theory of separation of powers.

Montesquieu, a French philosopher of the eighteenth century, on visiting England had been much impressed with English liberties, which appeared in striking contrast to those of the French under Louis XV. In 1748 he published a book called "The Spirit of the Laws," which had a tremendous vogue. In it he ascribed English liberties to the fact that govermental power in that country was divided into three parts: executive, legislative, and judicial. No part, he maintained, was all powerful, and all parts would be checked in any attempted usurpation by the others.

The vogue of this book and the fact that the colonists had been living under governments whose power was so divided, combined to write the principle into

the law of our land. True, the separation of powers in the colonies had not been instituted for the purpose of preserving colonial liberties, but rather as a means of furthering English power. The governor was appointed by the king for the sake of maintaining English control. The courts were independent of the legislature, so that through them—particularly the Privy Council—the actions of the legislature might be subjected to an English veto. In fact, only the lower house of the legislative assemblies was really concerned with colonial liberties. All this, however, was overlooked, and Montesquieu's doctrines were embedded in our fundamental law.

A further development of the principle was the theory of checks and balances. Very logically it was asked, if the separation of powers made for the furtherance of liberty, would not a further subdivision of powers do likewise? Would it not be well to divide legislative power between two bodies and balance one against the other? Might it not be wise to decentralize executive power and divide it among several offices?

There still remained the possibility of arbitrary action by the different governmental agents within their respective fields. Could not this be prevented? Could not further checks be added? If each department of the government was given power to check any action by another, could not the mutual jealousies of the various parts then be depended upon to keep each in its proper place? Thus there developed the

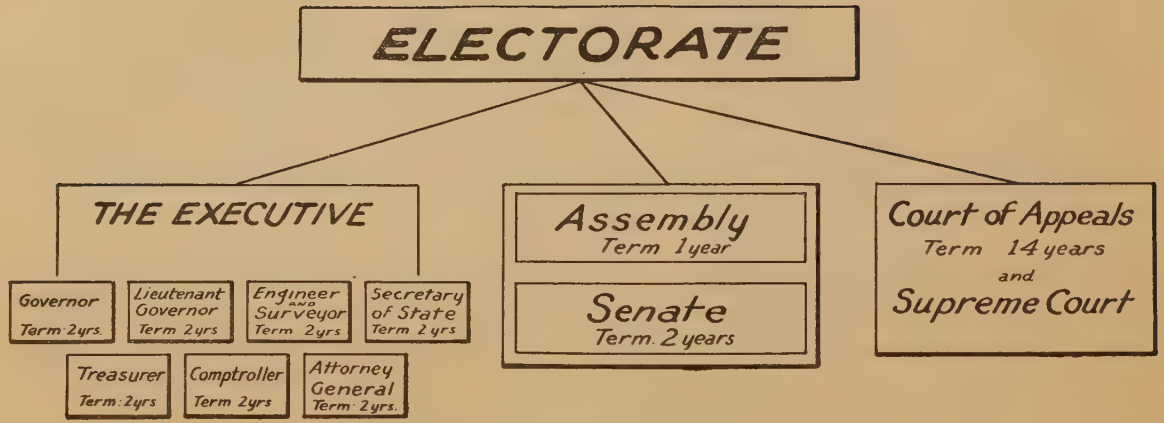

Chart III.—A Typical State—New York

doctrine of checks and balances, growing from the same soil as the separation of powers—distrust of government.

How far have these principles been applied? In the federal and state governments the doctrine of separation of powers has been universally accepted. In each unit separation exists. Not so, however, in the cities. More than six hundred of them ignore the theory completely and concentrate executive and legislative functions in the same hands. The question may well be asked: with what logic can the separation of powers be accepted as the keystone of our state and federal governments, but be rejected in our cities?

Evidences of the checks and balances theory are equally widespread. Not only is it to be seen in the bi-cameral legislatures in both state and nation, but also in the executive department of practically every state, for almost everywhere the state executive power has been divided among several independent officers, governor, secretary of state, treasurer, or what not. To practically every department have been given, moreover, certain weapons of defense. The federal system will serve to illustrate. The President may check the legislature by means of his veto, which can be passed over only by a two-thirds vote. The judiciary in its turn may check the combined efforts of the President and the legislature through its power to declare laws unconstitutional. The legislature, through its power to impeach and remove both administrative

and judicial officers, possesses an equally powerful weapon. The right of the Senate to confirm many of the President's appointments, and to ratify treaties, and the right of the President to pardon those condemned by the courts, are other items in the system. Similar checks exist in practically every state government.

What has been the effect of these theories upon our political institutions? How have they worked out in practice? One effect of the separation of powers has been frequent deadlocks between the executive and legislative branches of the government, with the consequent suspension of all policy determination until the next election. The situation was concisely summed up by William Allen White in a reply to an inquiry concerning the part played by the Kansas Industrial Court in a recent election. He is reported to have wired:

> Industrial Court played important part in election. Was vigorously supported in Republican platform and violently denounced in Democratic platform and issue hotly contested in election. People voted for Democratic governor pledged to repeal law, and elected Republican legislature pledged to sustain law. Tune in and when you pick up *vox populi vox dei,* wire me, collect.[1]

Such is the result of many an election. So futile is such an election in determining what policies the people

[1] Quoted by Boots, Ralph S., *National Municipal Review,* February, 1923, p. 53.

desire to see enacted into law that it might just as well not be held. And yet—in the case of the Kansas Industrial Court—the people of Kansas either did or did not want it maintained. The same is true in most other cases.

A second consequence of the system is that, even when both the executive and legislature are dominated by the same party, friction and consequent inefficiency very frequently follow. Divergent plans and purposes often motivate the two branches, and frequent shifts occur from one policy to another. When opposite parties dominate the two branches, partisanship very frequently causes inefficiency even where it does not cause a complete suspension of the legislative function. The desire of the party dominant in the legislature to discredit the administration very often causes it to refuse even reasonable demands which have little or nothing to do with questions of principle.

The result of this situation has been to compel parties to organize and drill to an even greater extent than they otherwise would have done, for it becomes necessary to capture not only the legislature but the administrative offices as well, and sometimes even the judiciary, before it is possible to carry out any program for which the party stands. This means strongly institutionalized parties, for only such are capable of waging the battle with any hope of success. And although parties may be looked on with favor in a repre-

sentative government, the institutionalization of those parties carries with it, as we have already seen, many inherent evils.

However, tyranny does not exist in the United States. We hear talk about it occasionally, but nobody takes it or means it very seriously. Is not this attributable to the genius of our government? Perhaps! But before we come to a final conclusion let us examine some other countries of the world. Is England crushed beneath tyranny? Are any of the self-governing dominions? Is France? The answer in each case is, I am sure, *No*. Does there exist in these countries a separation of powers? Checks and balances? Again in each case the answer is, *No*. *All power* is concentrated in the British Parliament. This, perhaps, should give us pause before we decide that American liberties are attributable to the principle of the separation of powers, or to checks and balances. It is a fairly sound law of logic which maintains that a variable—that is, a factor which may or may not be present—cannot be taken as the cause for a consequence.

What effect has the growth of our political parties had upon the operation of these principles? In those cases in which there might be danger of tyranny, where a party has become sufficiently strong to dominate all branches of the government, we find the checks do not function. In such cases the decisions on matters of major importance are made in party councils, in entirely extra-legal bodies. If the party is harmonious,

the decisions of the party council are more or less automatically translated into governmental action.

And so we seem to be confronted with a dilemma. Where party strength has been weak and there has been no danger of tyranny, the checks have operated, producing consequent deadlocks and inefficiency. Where party strength has been strong and the party harmonious, they have not been effective at all.

It is little wonder that many modern political scientists raise the question as to whether such a system should be maintained or whether it would not be better for us to remodel all our governments—particularly those of the states—along different lines, even as we are doing with those of our cities.

The second feature of our Constitution designed to prevent the growth of tyranny was the creation of a *sphere of anarchy,* that is, a province of human life into which governmental action could not go, or could go only upon the observance of certain forms. A glimpse of this we have already seen in our discussion of the "due process" clause. These limitations have been included in what is commonly called a bill of rights. An analysis of the bill of rights attached to the federal Constitution will serve as an illustration of the principle. These guarantees of liberty were principally added in the first ten amendments, although not all of them. They attempted to safeguard certain personal rights and certain rights of property by prohibiting governmental interference with them. And so we find the first amendment stating that "Congress shall make

no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances," and the fourth amendment providing: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ."

The provisions of the fifth and sixth amendments relate to court procedure. The fifth provides that "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, etc.," while the sixth discloses that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." Besides these there are the provisions that "no bill of attainder or ex post facto law shall be passed." These are perhaps the most

important safeguards of personal rights found in the Constitution.

Chief among the safeguards upon property is the provision applicable to federal and state governments alike—"no person shall be deprived of life, liberty or property without due process of law."

Two questions present themselves—first, are these barriers to governmental action wise? and, second, should they be extended to other phases of human activity?

The answer to the first question can only be found in a discussion of the provisions, item by item. In general, a bill of attainder, that is, an act of the legislature punishing a man in consequence of a certain course of conduct without trial by the court, is in no greater favor to-day than it was at the time the prohibition was written. It is almost universally held to be unfair to have the accuser, probably in such cases also the injured party, act both as judge and jury. Similarly there is little criticism of the prohibition upon ex post facto laws. To punish a man for doing something which was not a crime at the time of his action likewise seems unjust.

Not so, however, with the safeguards upon indictment and trial. Although no widespread popular sentiment questions the wisdom of these provisions, nevertheless they are generally under the fire of police officials. To them in part, at least, is attributed the existing crime situation in America, where in some of

our larger cities there are almost as many crimes committed as in the entire kingdom of Great Britain. Why, it is asked, should not a criminal be made to testify against himself? Why, because in one trial justice has miscarried, should a criminal be allowed to get off scot-free and the government be forbidden to re-prosecute him?

The actions of officialdom during the late war indicate also that in certain departments at least there are those who question the wisdom of freedom of speech and of the press—at least in times of crisis. The spirit of the group of Jeffersonians who were responsible for the insertion of restrictions upon governmental interference with such freedom was greatly violated by both administrative and judicial interpretation during the war. In fact, one is inclined to believe that Jefferson himself, had he uttered certain of his remarks during the crisis, would have been the object of official attention. Be that as it may, the history of the past six years indicates very forcibly that there are those who do not believe that the government has *no* right to abridge freedom of speech, but think that it has a decided right to do so when it, in its wisdom, deems such action wise. For what reasons, they ask, should a government which punishes individuals who slander other individuals stand by and be slandered itself.

On the other hand, the arguments set forth by the school of thought which wrote the restriction into the Constitution are about as follows: Governments are

primarily agencies of men. No men are infallible. Since governmental action in suppressing speech would be nothing more than the action of the particular group of men who might be occupying office at the time, it follows that such action might very well be ill advised. The ideas they suppress might very well be *true*. Many examples of such lack of wisdom on the part of governments in the past in the suppression of speech can be cited. Socrates (perhaps the greatest of the ancients) was put to death because the government of his day believed his questions were "corrupting the youth of the nation." That man whom millions today regard as divine, Jesus Christ, was crucified as a blasphemer.

But even if the statements advanced are not wholly true, they should still be allowed to circulate, so these advocates maintain. Very little of what passes current is wholly true. Most of it is but half-truth. Even the scientist in propounding such a seemingly self-evident thing as the law of gravitation will not claim it to be the whole truth. All he will say is that the law of gravitation is the best explanation of a certain group of phenomena so far advanced. If, then, most of what we think we know is but half-true, do we dare suppress statements that may contain elements of truth? How else than by the circulation of such statements will it ever be possible to obtain those elements of truth? And how save by the accumulation of these modicums of truth can we hope ever to arrive at the whole truth?

But again, they say, admitting the ideas advanced are entirely false, it is still desirable that they should be circulated. In open conflict between truth and falsehood, the truth can always be depended upon to win. And the very conflict of ideas is a desirable thing, for in the conflict of thought, thinking is stimulated.

Finally, along comes the practical politician and says: "What harm does freedom of speech do, anyway? The mass of the people are sound and cannot be swept off their feet. Speech is to the radical what a safety valve is to a boiler. Let 'em talk."

Whether the due process clause is wise, is an even more controversial question. On the surface, at least, it appears to be exceedingly desirable. Arbitrary and irrational action is guarded against and the rights of the minority to life, liberty and property are protected. What further justification is necessary? And yet, as we have seen, in so far as this clause relates to substantive rights, its exceeding indefiniteness gives almost arbitrary power to the court. The question has frequently been raised whether it is consistent with democracy to place power of this character in the hands of *nine men appointed for life.* In theory, at least, the legislatures are the policy-determining bodies. By virtue of this clause, however, there has been granted to the Supreme Court a power of veto over practically all regulatory legislation, which the legislatures may desire to enact, more effective in its action by far than that possessed by the President of the United States over acts of Congress. At least

three hundred acts have been vetoed, the majority of them, perhaps, having arisen under the due process clause. In some cases the decisions have been five to four, i. e., five judges have taken one side and four the other. This fact in itself indicates the vagueness of the clause and the degree to which individual judgment enters in its interpretation. It gives further point to the question previously asked: Is the possession of such extensive and arbitrary power by a group of judges *appointed for life* consistent with democratic theory? Obviously some inconsistency exists. But is it a sign of folly or of wisdom? This in its turn raises the question of the relative merits of democracy and aristocracy. Into this we cannot go.

What has been the effect of the provision from a practical point of view? In general has it not protected life, liberty and property? Has it not prevented arbitrary action? To ask these questions is to invite others. Have property rights in France and England been grossly violated? Have the citizens of Canada been subjected to arbitrary actions? And yet "due process" is unknown beyond our own boundaries!

To dismiss the subject thus summarily, however, would be wholly inadequate. The fact is that the due process clause has written the philosophy of the majority of the Supreme Court into our Constitution. Nowhere has this been more clearly expressed than in the dissent by Mr. Justice Holmes in the case of Lochner *v.* New York. "This case is decided upon an economic theory which a large part of the country

does not entertain," he said. "If it were a question whether I agreed with that theory I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. . . . The fourteenth amendment does not enact Mr. Herbert Spencer's Social Statics. . . . I think the word liberty in the fourteenth amendement is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and the law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us." Mr. Justice Holmes occupies a unique position in the court, and is frequently overruled in his interpretation of this clause.

One consequence of the situation is that social and economic legislation sometimes desired by overwhelming majorities in our state legislatures is frequently declared null and void by the court. To what extent this is due to the fact that the judges are appointed for life and thus lose touch with the people, it is difficult to say. To what extent the fact that the members of this tribunal are as a general rule twenty years older than the average legislator and hence frequently have a philosophy twenty years behind that of the

legislators, contributes to the same end, it is almost impossible to estimate. Be that as it may, an important factor in producing the situation in which it can be said that our social and economic legislation is twenty years behind pre-war Europe, *is* the veto which the Supreme Court exercises through its interpretation of the "due process" clause of the fourteenth amendment.

On behalf of the practice it can be argued that we can very well afford to wait and profit by Europe's experience. In criticism of it, the point can be made that twenty years is an exceedingly long time to compel a class or group of people to live under conditions which elsewhere have already been recognized as meriting change.

Suggested Reading

Beard, Charles A. *American Government and Politics.* (1924)

CHAPTER XI

STATE—LOCAL RELATIONS

In striking contrast with the relation of the states to the Federal Government is the relation of the states to the localities. In the vast majority of cases the states came first; cities were a later development. This fact explains, perhaps, why it is that the states have absolute control of their subdivisions. So strongly does there exist a sentiment for local autonomy throughout the country that many readers of these pages will find it difficult to believe that there is no inherent right of local self-government. Yet such is the case. Legally the state is supreme.

If your state desires to do so, it can—to-morrow, metaphorically speaking—abolish the city or county in which you are residing and wipe it out of existence as a legal entity. Nothing in the world can legally prevent the state of New York from doing away with the city of Greater New York and administering the necessary functions from Albany. Should Pennsylvania so desire, it could place the administration of the police departments of Philadelphia in the hands of the head constable of Girard or Oil City. The reverse of this is likewise true. It would be entirely

possible to give to the fire department of Erie jurisdiction over North East or McKean or any other village physically possible of access, and apportion taxes in those areas to support the Erie department. *In its relation to its subdivisions the power of the state is absolute.*

The localities have only so much authority as the state has *expressly* delegated to them, and even this may at any time be withdrawn. The term "expressly" in this connection has been purposely chosen, for there is no doctrine of implied powers by which the cities or other subdivisions may expand their activities, as the Federal Government has done. In fact, the contrary is the case. Doubts have generally been resolved against the cities.

The fact that the state is paramount and the cities strictly limited in their powers, does not mean, however, that the state legislature is unlimited in its sphere. The state and the state legislature, as we have said, are two different things. There was a time when all the power possessed by the state, with slight exception, was vested in the legislature. That time, however, is long past. The power of the legislative authority over localities was called in very frequently in the period immediately following the Civil War to remedy the ills of municipal government. Very often, however, the remedy was worse than the disease. "The transfer of control from City Hall to State Capitol," says the Evarts Commission, (had) "no other effect than to cause a like transfer of the methods and arts

of corruption and to make the fortunes of our principal cities the traffic of lobbies. Cities were compelled by legislation to buy land for parks, etc., because the owners wished to sell it; compelled to grade, pave and sewer streets without inhabitants for no other purpose than to award contracts for work. . . . Laws were enacted abolishing one office and creating another with the same duties, in order to transfer official emoluments from one man to another; laws to change the functions of offices with a view only to a new distribution of patronage, to lengthen the term of offices for no other purpose than to retain or place officers who could not otherwise by elected or appointed." [1]

As pernicious examples of legislative interference as need be cited were the erection of the City Hall of Philadelphia at the cost of $25,000,000 to the city by a self-perpetuating commission designated by name in the act of the legislature—at what profit to themselves no one can say; and the erection of the Soldiers' and Sailors' Monument in Cleveland. In this latter case it is not the cost of the monument that riles, it is not the principle involved—it's the looks of the thing! So at least certain residents of Cleveland have said. Of another type was the action of the powers that be at Harrisburg in abolishing the office of mayor in all second-class cities and establishing a state-appointed recorder in his place. In 1901 the legisla-

[1] Quoted in McBain, Howard Lee. *Law and Practice of Municipal Home Rule,* p. 9.

ture of the same state removed the elected mayors of Pittsburgh, Scranton, and Allegheny, and empowered the governor to appoint successors till 1903. And the practice was by no means confined to Pennsylvania.

As a result of this type of activity on the part of legislatures, specific prohibitions upon this, that and the other thing have found their way into state constitutions. The most notorious malpractices have been singled out and prohibited. Most common among these prohibitions were, and are, those which restrain state legislatures from interfering with the local election of municipal officials and the corollary restriction on the appointment of state commissions for the administration of local functions. State imposition of local taxes is also very frequently banned, as well as state interference with streets or local franchises.

Partisan and spoilsman activity was not, however, the only, nor the chief difficulty in the relation of the states to the local governments. The fact is that the burden of properly supervising the cities was greater than the legislatures could bear. The task, if properly performed, would have consumed an inordinate amount of time. Between 1896 and 1912 thirteen thousand three hundred and one special laws were passed in New York; five thousand two hundred and sixty-six of them affected cities. As many as four hundred and sixty were passed in one year. In 1908 over one hundred special laws affected New York City alone. When one considers that the average ses-

sion of a legislature is less than ninety days, from which must be subtracted time for organization and time for the preparation of bills, it becomes apparent what great inroads upon the time of the legislature really adequate consideration of these measures would make. *The fact is that adequate consideration of local measures was not, and is not, secured.*

When one considers the character of the measures introduced, it is difficult to see why a legislature should give very much attention to them. Nevertheless, under the system of legislative supervision of local units such measures have been more or less necessary, ludicrous as they may seem. Little Falls had to go to the New York legislature for permission to have a street paved; Syracuse had to go to Albany for authority to use substances other than water in the spraying of her streets; Buffalo had to petition the legislature for power to spray her trees; Geneva had to go to the policy-determining body of the state to raise the salary of her superintendent of streets from $75 to $90 a month. Binghamton had to ask power to appoint a stenographer for the corporation counsel; Newburgh, to use the city funds for band concerts; Cohoes, to borrow money for the fire department.

Massachusetts cities had to obtain legislative permission to use the school buildings for social centers, to celebrate the Fourth of July, to build footpaths in certain localities, to open the schools to foreigners and to offer rewards for the apprehension of murderers. One writer, in describing the situation, says:

"There is scarcely a single item in municipal administration, from the construction of a $20,000,000 city hall to the increase in the salary of a bridge tender, . . . which has not at some time, and in some states, been the basis of action by the legislature." [1]

As the impossibility of the system became apparent various attempts were made to remedy it. In some states provision was made that legislation regarding cities could take only a general form; in others a number of charters were drawn up from which the cities could pick at will; in Illinois and New York the greater cities, at least, were given a veto more or less final; in still other states the cities were granted home rule.

All of these measures improved the situation somewhat. Most widespread, perhaps, is the requirement for general laws. It is obvious, however, that it is impossible to pass one detailed law which will at once meet the necessities of Chicago and Peoria, for the peculiar circumstances of each demand individual attention. To overcome this difficulty the legislatures resorted to classification; that is, grouping cities according to population, with the result that in some states every city was put in a class by itself. This meant a return to the days of partisanship and special legislation. And so it came about that in some states certain reasonable classifications were inserted in the state constitutions; in others the courts read them in.

[1] Maltbie, M. R.

The device of home rule was also resorted to; that is, the cities were given power to manage their own affairs. The arguments which have generally been advanced in favor of this device may be briefly summed up. First, the legislature is very often partisan. In support of this claim unlimited data could easily be advanced. Second, the legislature does not have time to consider local affairs. The mere division of the number of minutes a legislative body is in session into the number of bills introduced for consideration will reveal a very interesting situation which seems to bear out this claim. Third, the legislature is predominantly rural and, therefore, has little interest in, and feels little responsibility for, the administration of muncipal affairs. It is, perhaps, not irrelevant to ask what the legislator from Gayville cares about the concerns of New York City, or what the legislator from New York City cares about the condition of the streets in Cohoes. Fourth, many city problems are essentially local. Fifth, home rule fixes responsibility; sixth, it makes experimentation possible; and finally, it has a broad educational value.

Against home rule it is maintained that municipal councils are often untrustworthy—a fact easily substantiated; that all municipal affairs are matters of state concern; and that the whole trend of the times is toward centralization. And so the controversy goes.

The advocates of home rule seem to be getting the better of the argument. Eighteen states have adopted

the policy, including a majority of those containing large cities, and considerable sentiment in favor of it exists elsewhere.

Two types of home rule are possible—that guaranteed in the state constitution and that granted by mere act of the legislature. The former has the advantage that it carries to the legislature from the people a mandate to abstain from interfering in local affairs. It has the disadvantage, however, of throwing upon the already overburdened courts the determination of what are "municipal affairs." Legislative home rule, although having the disadvantage of being dependent upon the whim of the legislature, at least permits a more comprehensive statement as to "municipal affairs," thus relieving the courts of some of the burden, and makes easier any adjustment which may be necessary between state and local functions. The general tendency, however, has been to enact constitutional home-rule amendments.

The question may well be asked: Is not this trend toward decentralization inconsistent with the movement toward nationalism? In so far as it is, the modern accentuation of national and local problems constitutes the explanation. But the inconsistency is probably more apparent than real, for as the legislature has been laying down its powers the administration has been taking them up. To-day there is vastly more state administrative control than ever before—though it is still very slight. Without question, in so far as local functions are of state concern, they will come more

and more under the influence of state administrative supervisory officers, who will probably be specialists in the fields under their jurisdiction and thus be able to administer a wiser and more effective supervision than the legislature.[1]

The problem which confronts us, then, is that of determining whether the modern trends are wise and to be encouraged, or whether they are unsound and to be discouraged.

[1] It should be said that the similarity of functions of the rural subdivisions of the states has made the problem of their relation to the state government less acute. It is still possible in most states to govern these communities by general law. As their problems become more and more complex, it can be expected that their relations to the state governments will follow a course similar to that of the cities.

Suggested Reading

McBain, Howard Lee. *American City Progress and the Law.*

CHAPTER XII

FORMS OF MUNICIPAL GOVERNMENT

Four general types of municipal government exist in the United States. The first is the old or weak-mayor-council form; the second is the new or strong-mayor-council form; the third, the commission plan; and the fourth, the city-manager plan.

The first, it will be noted, resembles in a great many particulars the plan of organization commonly found in the states. Diffusion of power and absence of responsibility seem to be its keynote. The historic doctrines of separation of power and checks and balances prevail. A multiple executive composed of the mayor, the city treasurer, the city auditor, the assessors and sometimes one or two lesser officers, conducts the administration. They are responsible only to the people who elected them. The city council is usually a uni-cameral body, i. e., composed of only one house. Its members are practically always chosen by wards and owe their first loyalty to the geographic

[1] This chapter is based in large measure on the Chart of Typical City Governments issued by the League of Women Voters of New York City. Credit must also be given to them for the charts on pages 139, 141, 143 and 147.

area which they represent. More difficult, indeed, is it to place the allegiance of the civil service. Some slight power of appointment rests exclusively in the hands of the mayor; some, in the hands of the council; the bulk of it, however, is divided between the two. In practically all cases the mayor's nominations to office must be approved by the council. Thus the "checks" appear. And municipal councils where they have possessed this power have, indeed, made use of it. Somewhat to "balance" the loss of authority thus involved, the mayor is given the power of veto over councilmanic enactments.

In favor of this particular type of municipal organization it is argued that party responsibility is preserved; that popular control is assured; that political leadership is developed; and that our national parties are maintained intact in the cities. Against it are the charges that it scatters responsibility; that it is costly, complicated and inefficient; that it places in charge of the administration a man elected on questions of policy or popularity who is in nowise equipped to handle the technical problems of a modern city; that the shortness of his term of office (usually two years) inclines him to work for re-election rather than for administrative efficiency; in fact, that the shortness of the term is such that not even the department heads can master the details of their respective departments. It is contended, furthermore, that the quality of the council is inevitably poor, that petty districts produce petty men, that ward politics breeds the ward heeler, that this

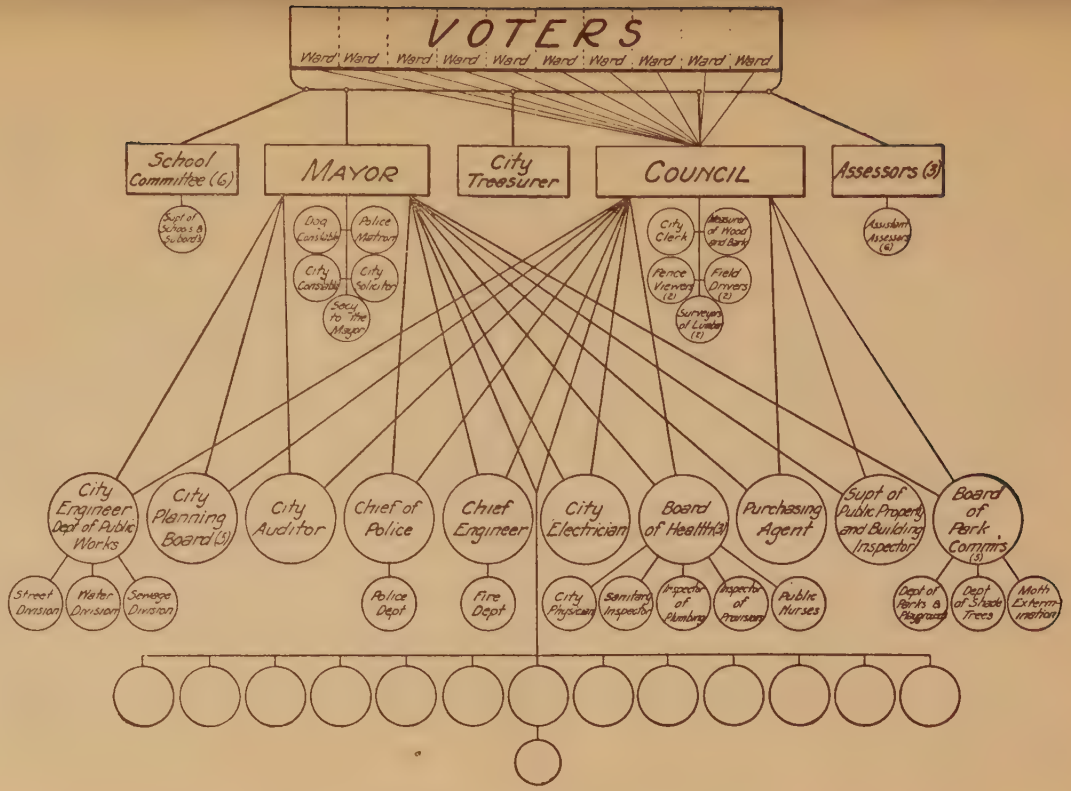

Chart IV.—Weak-Mayor-Council Plan

leads to one inevitable result in the matter of appointments—to wit, spoils. Finally, the system has embedded in it the long ballot and all the evils inherent therein. Thus the argument goes. That the negative has the better brief is too obvious to need comment. And slowly but surely this type of municipal organization is being replaced by more efficient forms.

One of these is the strong-mayor-council type. It differs from its predecessor in many particulars. Under it the multiple executive is abolished. Only the mayor, the president of the council and the council are elected. The legislative body itself is greatly reduced in size, and is usually elected from the entire city or from very large wards. The administration is placed squarely upon the mayor. He has full power of appointing, supervising and removing, and can in nowise shirk his responsibility. The council, in turn, is entirely accountable for the policies adopted, for the veto power is withheld from the mayor. Under this system, therefore, the lines of power and responsibility are perfectly clear.

The advantages claimed for it are that the people elect the chief executive officer directly and that he furnishes them real political leadership. Furthermore, complete responsibility for the administration is placed in his hands. It is also contended that the complete separation of executive and legislative functions is conducive to a more businesslike procedure in both branches of government, and that the elimination of wards introduces into politics a superior type of poli-

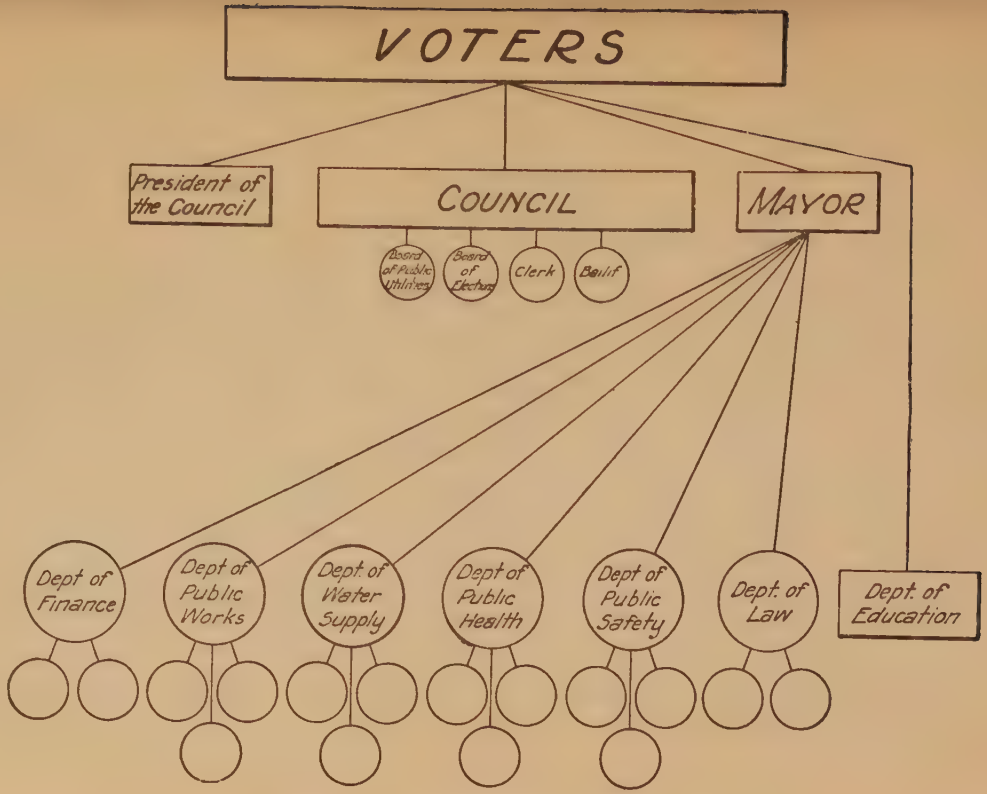

Chart V.—Strong-Mayor-Council Plan

tician who would not be interested in the pettiness of ward politics. He has, moreover, no pressure upon him to subordinate the general to the ward interest. Finally, the short ballot becomes possible. That there is considerable weight to these arguments not even the veriest doubter will deny. Nevertheless, the critics of the scheme point out that the choice of the mayor under this system will turn more than ever upon questions of policy or popularity which in nowise equip him for the administration of the city. They reiterate that the tenure of office will of necessity compel him to play politics from the very beginning, and to that extent neglect the administration. And finally, they charge that even if the mayor were inclined to master the problems of administration, he could not do so as the time is so short that not even the department heads can master the routine of their respective offices. These *were* the charges against the weak-mayor-council type; and they are the charges against the strong-mayor-council organization. To some degree they have contributed to the development of a third form of municipal government, the city-manager-plan.

Before discussing this form, however, it might be well to examine the commission plan. This differs from either of the foregoing in that it abandons the principle of the separation of powers and the theory of checks and balances, and concentrates both executive and legislative power in the hands of a commission elected by the people. Collectively, the commissioners, usually five in number, constitute the municipal coun-

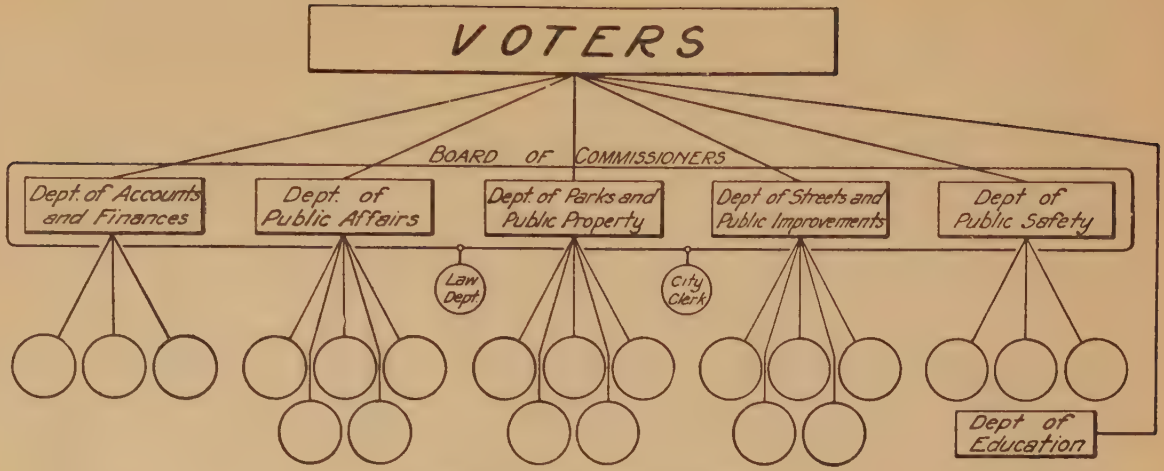

Chart VI.—Commission Plan

cil; individually, they conduct the city administration. At the head of each of the great city departments is a commissioner in full charge. On the surface at least, this seems a radical change in our traditional form of government.[1] Why has it developed?

On its behalf its proponents contend that it has the great virtue of simplicity, conducive, so they claim, both to efficiency and intelligent voting. Through it even more than through the strong-mayor-council type, the short ballot is achieved. Under it, as well as under the former plan, the elimination of wards has in a measure at least eliminated ward politics. That a small group facilitates business to a far greater degree than does an unwieldy council, is beyond question. Not so certainly, perhaps, and yet with reasonable sureness it is maintained that responsibility for both the tax rate and the service falling upon the same body is conducive to efficiency. For the most part the points seem well taken. Nevertheless, it should be noted that under this plan the multiple executive is restored; the administration is five-headed. And the chances are that the joint authority of the commission will not be sufficient to secure that coöperation among departments which is desirable. In practice, it has more than once occurred that the commissioners have worked for the good of their departments rather than for the good of the whole administration, particularly

[1] Actually the commission form existed very early in our history, although the older form differed somewhat from the modern one in detail.

in the matter of appropriations. In fact, to such an extent has the disintegration sometimes proceeded that one opponent of the system maintains that the city actually gets five little separate governments. That this condition is not ideal is perhaps realized when one remembers that all five of the department heads are mere amateurs at municipal administration, having been elected, in most cases, upon questions of policy. The question also very naturally comes up whether five men are sufficient to represent the varied political, geographic, racial, and economic interests of any large community. One does not have to be a member of the society of sceptics to realize that some of these criticisms are well taken. They, too, perhaps help to explain the development of the city manager idea.

This latter plan resembles the commission form in many respects. A small council, usually composed of five to seven members, is selected by the voters and is responsible for all the work of the city. Unlike the commission, however, it does not attempt to conduct the administration itself. Instead, it hires a city-manager for the purpose, who is at all times under their supervision and control. He, in his turn, is given full administrative control over all the departments of the city, with the power of appointing, supervising and removing the department heads whenever he thinks necessary.

In favor of this type of organization it is maintained that popular control is much more thoroughly

achieved and higher efficiency attained than under any of the types hitherto discussed. The government is in the hands of a commission fully responsible to the people, both for their own and the city manager's actions. Since the only task now imposed upon the council is that of policy-determining, the burden upon the voter is confined to the selection of typical representatives. The need to estimate the candidate's administrative ability is no longer present. The fact that the council is no longer called upon to master the dreary detail of administration is conducive also, so the proponents of this plan believe, to the candidacy of a superior type of individual, one who is interested in the broad questions of municipal policy but who could not afford the time demanded to administer a department. That the short ballot is conducive to the same end, admits no refutation. The size of the council also facilitates business. Moreover, there is the great advantage of having concentrated in the hands of one man, the city manager, all the administrative work of the city, making coöperation between the various departments not only possible but probable. Furthermore, a premium is placed on efficiency, since the chief executive or city manager is hired by the council, not for a limited term, but as long as he gives satisfactory service. The stability of administration thus made possible is more likely to produce far-seeing plans for the city's development than is the constant turnover under any of the other forms of organization. In addition, the possibility of selecting a city manager

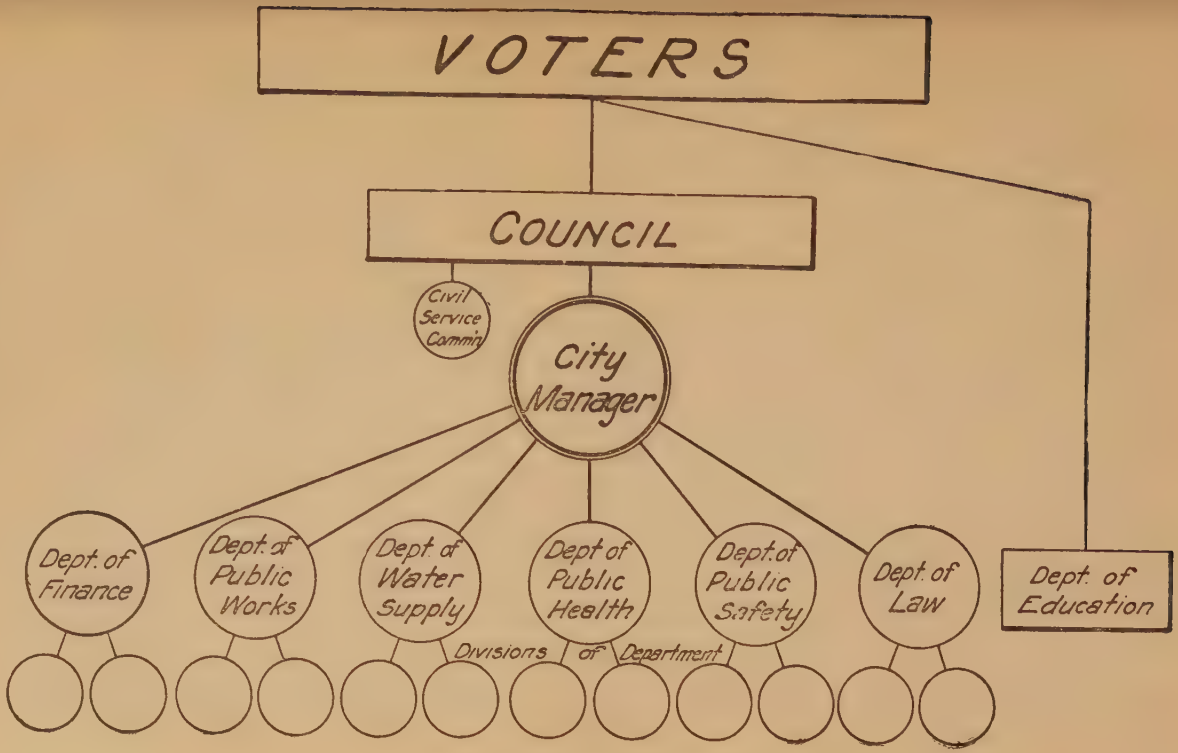

Chart VII.—City-Manager Plan

from any place in the United States gives a greater range for the choice of the man best equipped for the position than do the usual political elections. These are the claims of its proponents. And many of them are, indeed, well founded. Objection is made to the system, nevertheless, on the ground that the right to elect the executive directly is taken out of the hands of the people and that in consequence the city manager will be out of touch with local sentiment. Particularly will this be the case if the manager is an engineer, as in all probability he will be, for technicians are by education and training narrower in their sympathies than even the average layman. Furthermore, no political leadership is provided. Finally, here as before, it is contended that five or even seven men are too few to represent the varied political, geographic, racial, and economic interests of any large community.

The question naturally arises: Which of these four types of organization is the best? One can be unhesitatingly condemned, the weak-mayor-council form. No government organized on the principle of diffusion of power and confusion of responsibility can hope to be successful. Which of the other types is to be preferred, is primarily a matter of expediency. Local circumstances enter into the choice to such an extent that any generalization which may be made will be faulty. There has been a decided drift of recent years, however, toward the city-manager plan, which is significant though not by any means conclusive.

Suggested Reading

Maxey, Chester C. *An Outline of Municipal Government.* (1924)

Munro, W. B. *Municipal Government and Administration.* (1923)

BOOK THREE

LAW MAKING

CHAPTER XIII

MISREPRESENTATION

The prime function of our legislatures is to reflect the opinion of the country. Thus only can they pass on questions of public policy with the assurance that they are carrying out the popular mandate. Such, at least, is the democratic theory of representative government. This being the case, it is apparent that the question: How accurately do our legislative bodies represent public opinion? deserves consideration. Only detailed analysis of past elections will enable us to arrive at sound conclusions. The conclusions inevitably reached, however, will probably surprise a great many readers.

The fact that in 1920 the Republicans carried the country by sixty per cent of the popular vote, while the Democrats polled only thirty-four per cent, is a fact too well known to need comment; but that the Republicans obtained sixty-nine per cent of the seats in the House of Representatives, is not such common knowledge. Nor has much emphasis been placed upon the fact that in 1918, although the Democrats carried the country, the Republicans carried the House. Two hundred and thirty-one seats were the just dues of

Democracy; one hundred and ninety-four were her portion; whereas the Republicans, who were entitled to but one hundred and ninety-three seats, actually obtained two hundred and thirty-five.

More striking, perhaps, was the misrepresentative character of the Pennsylvania delegation to Congress in 1920. Although approximately 600,000 Democratic and minor party voters in the state had given voice to their opinions at the polls, they sent but one spokesman to Congress. The 1,114,000 Republican voters, on the other hand, secured thirty-five representatives in that body.

Well may the question be asked: What has become of the principle, one man, one vote? The justification of a representative system which allots *thirty-five* representatives to one million people of one political creed and *one* representative to half a million people of another, must be curious indeed. And yet this situation is by no means unique. Assuming it to be the purpose of our legislative assemblies to reflect public opinion, one wonders why 222,000 Republicans residing in Nebraska should return six representatives to Congress, while 225,386 in North Carolina have none. One wonders why 127,482 Democrats residing in Arkansas should have seven representatives, whereas 190,152 in Tennessee have only five, and 295,260 in New Jersey have only one, and 510,977 in Pennsylvania have none.

Additional statistics seem unnecessary. Yet line upon line, column upon column, they could be piled up

to indicate the misrepresentation characteristic of our representative system. If there is one thing in connection with our legislative bodies that should be emphasized, it is the fact *that they do not accurately reflect the opinion of the country.* Let the reader obtain the statistics for his city, for his state; let him compare the relative strength of the parties as it was indicated at the polls and in the legislative assemblies, and with very few exceptions he will find the parties are not represented in the assembly (whatever that assembly may be) in proportion to their strength. In some states and in some localities the fortunes of our electoral machinery will favor this party, in others that. But in few localities, indeed, will the legislature be an accurate reflection of public opinion, as that opinion was expressed at the polls.

What is the explanation of the situation? Two factors have contributed to it. The gerrymander and the *district system* of electing representatives.

The gerrymander is a perversion of the district system. It is the device of laying out districts according to the exigencies of party politics—that is, of laying them out, not in a compact and contiguous manner so as to obtain an equality of population, but in the way which will bring increased strength to the dominant party. This only can explain the queer and curious shapes of many election districts. This only can explain why election districts exist in which it is impossible to move from one part to another without going to an adjoining state.

How is it done? Very easily. Let us imagine a section of the country shaped like an equilateral triangle. This region must be broken up into three election districts. The Democrats are in power in the state legislature and have the plotting of the districts. Toward the apex of the triangle is a strong Republican section, toward the base an even stronger Democratic section. If the districts are formed by drawing boundary lines from the center of the region to the middle of the sides, that district near the apex will certainly go Republican. If the districts are formed by drawing lines from the apex so as to trisect the base, the districts will just as certainly go Democratic. Would these facts have any influence upon the districting of the region? Without question they would. Should the dominant party have this advantage? If not, what can be done about it?

So long as the single member district system exists —nothing.

Gerrymandering is not alone responsible, however, for the misrepresentative character of our legislative assemblies. The district system itself is at fault. So long as it is possible to elect only *one* man, only one philosophy of politics *can* be represented. It is perfectly possible that a state may be fairly divided without any thought of partisan advantage, yet the mere carrying of each and every election district by one per cent would automatically—so far as representation in our assemblies is concerned—disfranchise forty-nine per cent of the population. No spokesman

presenting their point of view would gain admittance to the legislature. Such was the case in Pennsylvania in regard to Congress. Such very nearly was the case in New Jersey recently when only one Democrat was elected to the state legislature.

In New York City, on the average, for the past twenty years forty-six per cent of the population could have remained away from the polls and there would not have been one iota of change in the personnel of the municipal council of the city. On the average, forty-six per cent of the citizens of New York City have been disfranchised—so far as securing representation for their views in the local legislature has been concerned.

The author of this book happens to be geographically located so that the only time he has even a fighting chance to obtain representation for his political beliefs is when an election to the United States Senate occurs. He certainly finds it hard to believe that he is represented on the prohibition issue by the bartenders and ex-liquor dealers who have control of the dominant party in his district. Yet this is exactly the position of a surprisingly large number of people. Disfranchised because they do not agree with the local majority.

What can be done about it? Is there any remedy?

A system of proportional representation will obviate many of the difficulties. It will eliminate in the first place the single member district and with it many gerrymanders. It will also insure representa-

tion in legislative bodies more nearly proportionate to the relative strength of the parties.

At the present time one variation or other of the system is found in Austria, Belgium, British Columbia, Bulgaria, Cuba, Czechoslovakia, Costa Rica, certain of the provinces of Canada, Denmark, Ireland, New Zealand, Poland, South Africa, Sweden, Tasmania, and in certain cities of the United States, the largest of which is Cleveland. It cannot be considered an altogether untried system.

Two principal variations of "P. R.," as it is called, are to be found, the List and the Hare. The former presumes parties and party loyalty. In its simplest form each party puts a slate in the field. The voter ballots, not for an individual, but for the party. The representatives to be elected from the district, usually from five to nine, are apportioned among the parties in proportion to their relative strength. This, needless to say, places the independent voter at a disadvantage. Various shifts in the List system have been employed to lessen this disadvantage, none of them, however, altogether successfully.

It is for this reason that the single transferable vote, or the Hare system, has been most widely introduced into the United States. Under this system the voter marks his ballots in the order of his preference, that is, he places "1" after the man of his first choice, "2" after his second, and so on for as many as he pleases. His ballot is then counted for the man first named thereon unless it should happen that he al-

ready has the quota, the number sufficient to elect. In that case, since it would be a tribute, nothing more, to give it to the candidate first indicated, it is given to the man named second, or if he does not need it, to the third, and so on down the list. Thus eventually the vote is used to some purpose.

The technicalities of the count need not trouble us here, although they are often urged as a valid argument against the system. A somewhat critical observer at the last election in Cleveland, Raymond Moley, says: "The claims commonly made by those who do not favor the Hare system—that it presents great mechanical difficulties in counting the votes, that it increases the danger of fraud, and that the possibilities of errors are large—were not strengthened by the actual operation of the system in this election." [1] And this is the verdict of experience everywhere.

One drawback only must be conceded: a greater amount of time must elapse between the closing of the polls and the conclusion of the vote. It took forty-six hours to count 105,846 ballots at Cleveland last November, and the greater the number of ballots the longer the time which must elapse. This does not mean greater danger of corruption, however, for the fact that the ballots have been gathered at a central place and that both parties are aware of the necessity for careful watching, will in all probability lessen partisan manipulation.

[1] *Political Science Quarterly*, December, 1923, p. 668.

The Hare system has the advantage, besides accomplishing its purpose of securing representation more nearly proportionate to the strength of the parties than did the old system, of lessening the burden upon the voters. The necessity for the direct primary is eliminated. The preference expressed on the day of election is not only a preference between parties but between individuals. Those candidates, therefore, who are the choice of the rank and file of a party will be the ones to receive the greatest popular support at the election, and the ones who will be chosen to represent that particular philosophy. Thus, if within a party whose strength entitles it to five representatives there are two who are exceedingly popular candidates, they will in all probability receive sufficient votes to elect them immediately. Perhaps they will have a surplus. In this case the surplus votes are not lost to the party but distributed to the remaining party candidates in proportion to their popularity as indicated by the second choices. The result will be that the five most popular representatives of the party will secure election, however great the number of party candidates running in the election. And the party will receive its proportionate share of the representatives.

It might be well worth while for those who are devoting their energy to the perfection of the primary to consider whether the next step after all is not *proportional representation.* Delay may possibly be wise so that the further verdict of experience may be heard from. The experiment in Cleveland should certainly

be watched with exceedingly great interest. But proportional representation as a possible improvement in our representative machinery certainly should occupy the thought and attention of all progressive citizens.

It is not the panacea for the world's ills, but the indications are that it will in some measure cure the existing malady of misrepresentation common to all legislative bodies.

Suggested Reading

Proportional Representation Review. (1921–1924)

CHAPTER XIV

GOVERNMENT BY COMMITTEE

The fight of the radicals in the 68th Congress over the adoption of the rules, and the consequent delay in the organization of our national legislature, reminds us once again that legislative procedure is very nearly as important as the election of our representatives itself. Of little use is it to concentrate our efforts upon an electoral system designed to produce a legislative body reflecting public opinion, and at the same time permit the existence of a body of rules which often frustrates the desires of the majority in that assembly.

In practically all legislative bodies in the land, state as well as national, any member may introduce as many bills as he desires. As a result as many as 30,000 bills are sometimes introduced into the national legislature in the course of a Congress. On the first day of the session just closed, some 2,650 bills and resolutions saw the light. The pressure on our state legislatures in proportion to the hours of their sitting is almost as terrific. The year 1922 saw more than three thousand bills introduced into the New York legislature. In 1913 the Nebraska Legislative Reference Bureau estimated that more than 55,873 proposals confronted the legislative bodies of the country.

This is in striking contrast to the situation in Canada, where less than 150 bills are introduced in a legislative session. In part this is due to the different traditions of the two peoples; in part it is due to a difference in legislative procedure. To a very much less degree is the representative in Canada the *ambassador* of his constituents to the assembly in which he sits than is the case in America.

A great portion of the legislation in the United States is introduced "by request." The attitude of our people was well illustrated by the campaign promises of a certain candidate in a recent Congressional campaign. "If I am elected," he said, "I will open an office on the corner of 133d Street and Avenue X, where my constituents can come to see me at all times, and I will do all I reasonably can as a Congressman to obtain such legislation as each may desire." A branch office of the Congress of the United States was to be established!

A further factor which adds to the mass of legislative proposals in the United States is the policy of *legislating in detail* which seems firmly embedded in the minds of our legislators. This means that the slightest administrative change necessitates a change in law. It means frequently that a law must be passed to determine a question of policy which would be settled by a department head in a business concern. All this means pressure upon the legislatures for the consideration of an impossible number of proposals.

If these two factors could be eliminated the situation

would be vastly improved. The number of laws conceived and introduced by our legislators themselves is probably relatively small.

Our type of legislative organization is also a factor in the situation. In Canada, for instance, only those measures which have the backing of the cabinet have much chance in the legislature. *They* have the right of way. Generally speaking, Canadian assemblies have few opportunities to consider other proposals; so that time spent upon the drafting of innumerable bills would, indeed, be time wasted.

Which procedure is the wiser, each reader must decide for himself. One thing, however, is obvious. The proposals introduced into an American legislature cannot by any conceivable means receive the consideration of the entire legislative body. Were Congress to remain in session ten hours a day for its entire session, only a quarter of an hour could be allotted to each proposal. This, divided among the 435 Congressmen, would allow but a second or two to each man to contribute his ideas—an impossible situation—especially for Congressmen. And the circumstances in our state legislatures would be relatively little better.

Only a system of committees can possibly handle the work to be done, and so such a system has been established. All bills introduced into our legislative assemblies are referred to them. The fact is that for the vast majority of bills the action taken upon them in committee is decisive. About 50 per cent of the proposals in state legislatures are killed in

committee, and 80 or 90 per cent of those introduced into Congress. Since this is the case, it is evident that the crucial stage in legislative procedure is the committee action. And the selection and procedure of committees is therefore exceedingly important.

There are two chief methods of choosing committees: election and appointment. The former is used in Congress. Formally, at least, the House elects its committees. Actually, they are selected by the party caucuses. The majority caucus refers to a committee on committees the drawing up of a slate of committee appointments. This, the caucus accepts or alters, as it sees fit. The minority caucus likewise agrees upon a slate for its committee places. (It should be said that customarily the minority is allowed a certain number of places on each committee). These slates are then put forward, and the formality of election takes place.

In the majority of state legislatures the committees are filled by appointment by the speaker. He naturally is not always entirely free to make his appointments. Frequently the promise of a place on this committee or that has been the *sine qua non* of a vote for him as speaker. Nevertheless, in probably the majority of cases his appointments are "promise free."

Just as important is the system of selecting the chairman, who is presiding officer at committee hearings and tactician in guiding the measures through the maze of parliamentary procedure. In Congress, and

in most legislative bodies, his power to call committee meetings often permits him to influence the committee's decision through a judicious selection of the time of call. Nor has it been unheard of for a committee chairman to forget to bring a bill before a committee, or to forget to report on it when the committee's decision has been adverse to his own.

Several methods of choice exist and others have been proposed. Although committee chairmen in Congress are nominally elected, actually the rule of seniority is the determining factor; that is, the member of the majority party who has served on a particular committee the longest time automatically becomes its chairman. There are, of course, exceptions, but in general this is the principle followed.

In favor of the practice it is urged that in the legislature, as elsewhere, experience is the greatest single factor; that the committeeman who has had the longest term of service will know the most concerning the subject matter of the bills which come before his committee. Without doubt, there is a large element of truth in this contention.

The opponents of the practice point out, however, that a difference of two years' experience on a committee, when that experience has run for eight or ten years, does not amount to much. The abler man, although chronologically having two years' less experience, may actually have mastered the subject matter of the bills far better than the "time server." They point out also that consideration of subject matter is

not the only task of a chairman; that his function of presiding over committee hearings and as a parliamentary leader in guiding a bill through the legislature is in some ways more important. Ability to handle these phases of the work well does not necessarily come with seniority. To these arguments also there is considerable weight.

The second method of choosing chairmen is appointment by the speaker. It is to be found in the majority of our state legislatures. In its favor it may be said that the speaker will place the men at the head of particular committees who are best qualified for the tasks. Against it is the charge that it concentrates entirely too much power in the hands of one man. If *you* had the appointment of committee chairmen in your hands, and you were aware that they would throw a tremendous weight this way or that upon particular pieces of legislation, what type of individuals would you appoint? If, for example, you knew that a bill limiting the hours of labor for children would come before the Committee on Public Health, whom would you appoint as chairman of the committee? If you favored that particular piece of legislation, without question you would select a man who likewise was favorable to it. And that is exactly what is done. Committee chairmen are frequently chosen so that all the influence and prestige of their positions will be thrown to support the speaker's political or economic philosophy.

A third method of choosing chairmen is through

election by the committees themselves. Those who advocate it say that it places the decision in the hands of the men who actually know the qualifications of the various aspirants. It overcomes the rule of seniority and enables them to select the most capable men. It also has the advantage of preventing the tremendous concentration of power in the hands of the speaker. So far as the writer knows, this method of selection has nowhere been tried in the United States. It is certainly worth consideration.

The function of a committee is threefold: first, the assembling of information; second, deliberation upon the policy to be pursued and the method by which it is to be carried out; and third, recommendation to the legislative body concerning it.

Information is usually derived from two main sources: the legislative reference library and committee hearings. The value of a library designed to serve the particular needs of the legislators, collecting all the relevant material obtainable in print, is too obvious to need comment. Practically every state, a number of cities, and the national government have established such institutions.

Committee hearings may be held at the state capital —usually they are—or elsewhere. In some jurisdictions the hearings are public; in others they are not. To some hearings only experts are summoned; to others the general public is invited, or at least such portions of it as are interested. The value of these hearings varies from state to state and from committee

to committee. In a state of the character of Massachusetts, where wide publicity is given to the hearings and a regular calendar is maintained, they are without doubt decidedly worth while. In other jurisdictions the hearings are more or less perfunctory, often being held merely for form rather than for accomplishment.

Sometimes special investigating committees are appointed, of which the Teapot Dome inquiry is an example. They are the exception, however, rather than the rule.

In connection with these hearings the question arises: Is the practice of holding hearings for the House and Senate committees wise? Should there not be joint hearings? That side which is represented by selfish economic interests will always be represented, no matter how many the hearings. But does the double hearing do anything more than throw an additional burden upon the few civic-spirited organizations which attempt to present the public point of view? Usually they are not very well financed, and the necessity of making two appearances upon the same subject undoubtedly causes some of them to concentrate their efforts upon fewer measures than they otherwise would. The double hearing certainly lessens the news value of a single hearing, for the fact that there will be a second hearing diminishes the dramatic effect that a "last fight of the pressure groups" might have. The fact that there already has been a hearing in its turn takes the edge off the second one. And so the question has very properly

been asked: What *does* the double hearing accomplish?

In connection with the second phase of committee work—deliberation—several problems arise. First and fairly important is the question of committee meetings. The numerous committees—as a rule unnecessarily numerous—of our legislative bodies inevitably make for conflicts of committee appointments. The result is that it is frequently difficult to get a committee together. This means for the conscientious, hard-working chairman a tremendous burden in the way of adjustments. It means for the chairman who desires to see his will rather than the committee's prevail, the opportunity for manipulation and intrigue. A judiciously selected hour of meeting can very frequently be made to exclude a sufficient number of the "otherwise minded" to change what would be a defeat for the chairman into a victory. In fact, it is told that a certain Pennsylvania chairman held a meeting of his committee and reported favorably on a number of measures when he was the only member of the committee present at the meeting. Such manipulation is, of course, indefensible. The problem is how to prevent it. The requirement of a quorum will check the practice in its extreme form, but other safeguards are also necessary.

The second and probably more important problem is whether or not committee deliberations should be public. "Open covenants, openly arrived at," was the slogan of a distinguished statesman of our times.

His chief argument was that the public is entitled to know how public business is being conducted. Nevertheless, when Mr. Wilson went to Paris, negotiations were carried on behind closed doors. The fact that discussion in public makes compromise more difficult is the chief reason for secret deliberation. It seems to be a very human failing for a man who makes a public statement to stick to it and look for evidence to support his contention. Sound conclusions can be reached only in the light of facts. If, therefore, public deliberation inclines men to take positions with less regard for facts than does secret, some question at least may be raised as to its wisdom.

Closely akin to this is the question of publishing a record of committee votes. In favor of secrecy here less can be said. If the greatest portion of a man's legislative work is done in committee, it follows that the public should be enabled to judge him upon it. Although a man's vote does not always indicate his position upon the various public questions brought up for consideration, nevertheless, as a general rule it is a safe barometer. And since a record is maintained of the votes on the floor of the legislature, little logical objection can be advanced to the publication of the votes in committee. This is one of the arguments advanced by those who desire legislative reform. And their point seems well taken.

In connection with the third function of a committee—reporting—the chief danger of the present system is that bills may be smothered in committee

even when they have the support of a majority in the House. To prevent this certain state constitutions provide that every bill must be reported out. The result has been that certain of the legislatures, at least, have been deluged with committee reports. Elsewhere reports are made mandatory upon the petition of a certain number of representatives or senators, as the case may be. This is now the rule in Congress, although an innovation of the session just closed. Elsewhere this right of petition is checked by the provision that no bill to which a committee is unanimously opposed need be reported out. Whatever be the expedient, it is obvious that "graveyard committees" should, if possible, be eliminated. Committees of the character of the Pennsylvania "Judiciary Special," more familiarly known as "The Pickling Vat," where such legislation as was opposed by the dominant clique in the Republican party found its final resting-place by virtue of the committee assignment, and the party escaped any responsibility for its defeat, are indefensible.

Suggested Reading

Luce, Robert. *Legislative Procedure.* (1922)

CHAPTER XV

THE LEGISLATIVE GAUNTLET

"Government by Committees" has long been a favorite characterization of our legislative procedure. And certainly the committee stage is a crucial stage in a bill's career. It is not, however, the whole gauntlet. Nor are the committee chairmen, powerful as they are, the sole leaders of the legislative body. The progress of a bill through a legislature may well serve to illustrate this.

All bills as they are reported out of committee are placed on a calendar, that is, on a list from which they are to be taken in order of precedence. There they tend to stay. The volume of business is such both in Congress and in the average state legislature, that not even all these proposals may be taken up. Hence the less important must give way to those of a more pressing character. The decision concerning what shall be taken up is placed in the hands of the rules committee in Congress. In conjunction with the steering committee, an unofficial committee of the majority caucus, this small group of men practically controls the business of our national legislature. Both the *actual* calendar and the time that may be devoted to

each piece of legislation are determined by them. Only through a special rule advancing a proposal over innumerable other proposals on the calendar can a measure hope to secure the attention of Congress. Normally only the rules committee can bring in such a rule. Thus there is lodged in the hands of this small group of men the determination of what is important and what is not important. *There* in great measure resides the leadership in the lower house of Congress.

The situation in the lower chambers of the state legislatures has not yet become so acute. To a greater extent the calendar is followed. And yet, even in these, toward the end of the sessions, circumstances have compelled the adoption of "sifting committees." The turmoil of the closing days has been sufficient in some states to bring a rules committee into being. In Montana, after the fortieth day, a joint legislative committee composed of five members from each branch of the legislature fixes the order in which pending legislation will receive consideration. In New York the committee on rules in the Assembly takes charge of all legislation during the last ten days. So at least the rules provide. Actually this period of control is greatly extended by the practice of setting a date for adjournment and subsequently postponing actual dissolution. This condition, however, does not prevail throughout the country.

In the Senate, the committee on rules has no such power as it has in the House, nor does it have in the

upper chambers of state legislatures, generally. Decisions as to the order of business in these bodies are usually arrived at in informal conferences. Consequently, leadership here does not exist in the same sense that it does in the lower house. The leadership of personality is always present, but not that based upon the occupancy of a strategic position relative to legislative procedure.

All leadership, however, does not rest with the committee on rules, nor with the committee chairmen, nor with a combination of the two. True, without the favor of these two powerful forces no bill could reach the floor of Congress. And the same is true in some of the state legislatures. The speaker, however, although shorn of much of his former glory, still retains immense power. His position on the steering committee alone would assure him of that. But in addition his place confers upon him enormous prestige. His power of recognition alone enables him to exert a tremendous influence. Time and again it has been used with effect. James G. Blaine recognized no one unless he knew and approved the purpose for which the member sought the floor. Although it is now said that in Congress "the speaker uses his power of recognition to no important degree save on the two days of the month (and the last six of the session) when motions to suspend rules by a two-thirds vote are in order," nevertheless an exaggerated use of it is still found in state assemblies. Toward the end of a session the speaker becomes almost an autocrat, dispens-

ing preference as he pleases by recognizing this or that member. His power to make rulings likewise contributes to the same end. It cannot be charged that all speakers formulate their rules in such a manner as always to favor their friends and embarrass their opponents. Yet, generally speaking, there is not much doubt but that in so far as interpretation permits it, the rules are construed to produce this result.

No less important is the speaker's power of reference, i. e., his power of assigning bills to the various committees. By a judicious selection of committees it is frequently possible for a speaker to determine the fate of a bill. It is usually well known that certain committees have certain attitudes, that they favor or oppose particular types of legislation. A slight shuffling of committee reference is all that is necessary to produce a given result. And it is a rare speaker who scrupulously abstains from such manipulation. The speaker's power in this particular is considerably enhanced if *he* selects the committees. In that case committee assignments can very readily be made with the conscious purpose of making the speaker's reference decisive. This situation exists only in the state legislatures. Where the speaker appoints a committee on rules, in addition, his control is very nearly complete. This committee is, in effect, the speaker's cabinet. Its members are in many cases chosen because of their sympathetic relationship to him. Again, however, this is not a general condition.

The situation in the upper chambers is very differ-

ent. The presiding officers there, although having many of the attributes of the speakers—the right of recognition, reference and ruling—have less often used them to make themselves party leaders. Usually, in so far as leadership exists in these bodies, it rests with the majority floor leader and his lieutenants.

It is apparent from even this brief review that a bill, to run the legislative gauntlet successfully, must have the combined support, in the House of Representatives at least, of the committee chairman, the committee on rules, the steering committee and the speaker. And the same is true with some variations in the lower chambers of state legislatures. Rarely is it possible to get a bill before the House save with the approval of the committee. And rarely is it possible, even then, in many legislative bodies, without the added support of the committee on rules. If the measure is a really controversial one, the aid of the speaker will certainly be very desirable, and his opposition would be extremely serious.

With the combined support of these forces, however, the chances of a measure's passage are exceedingly good. The debate, particularly on a partisan measure, is likely to be perfunctory, and, although it may secure changes of detail, it is very unlikely to decide the fate of the bill. The time allotted for debate is evenly divided between the proponents of the measure and the opponents. And very frequently points are well taken. Nevertheless, so slight is the correlation between the debate in the House and the final vote that

often not even a quorum is present to listen to the speaker. The absent members may be in the cloakrooms, in the lobbies, or even in their offices. Upon the summons of electric gongs rung for that purpose, however, they come tumbling into the legislative chamber and record their votes according to the directions of the party whips. Or if the measure is not a partisan one, they will more than likely vote to sustain the Committee report. This procedure is characteristic of Congress and of states like New York where the party lines are tightly drawn; and it is more or less true of all the states.

Finally, after the bill has run its course in the lower house—the committee, the calendar, the debate, the vote, and the signature of the speaker—it goes to the Senate. There it runs a similar gauntlet. Leadership here, however, is not so concentrated, and responsibility for the vicissitudes of the measure is even more diffused. The debate here is by no means so perfunctory, however. The most striking illustration of this in recent years was the debate on the League of Nations. There is not much question that if Mr. Wilson had been able to put the Covenant of the League to popular vote immediately upon his return from Europe, he would have carried the day. There is not much question, either, that were the League put to a vote to-day, it would be defeated. What has caused the change? One of the factors at least, and a powerful one, indeed, was the debate in the United States Senate. Whatever the observer may feel about

the merits of the arguments advanced by the "irreconcilables" and the "reservationists," he must admit they had tremendous influence. In part this may be attributed to the calibre of the men in the Senate. In part, however, it is due to the rules of the Senate which permit unlimited debate.[1] This power is sometimes abused and the will of the majority is thwarted by a filibuster of the minority. More often, however, it is used to call to the attention of the country the pro's and con's of the pending legislation.

Although it cannot be said that the debates in the state senates have anything like the same influence, nevertheless, generally speaking, they too have found it unnecessary to resort to the closure with anything like the frequency of the lower houses.

Should a bill be amended at any stage of the proceedings in the upper chamber, it is returned to the body from whence it came. The House is then presented with the alternative of acquiescing in the change or rejecting it. In the latter event the two houses appoint a conference committee for the purpose of effecting a compromise, if possible. Three men from each body, appointed either by the presiding officer or by the chairman of the committee whose bill it is, constitute the usual conference committee. Practically the entire legislative process is then concentrated in their hands. The report of this committee must be

[1] According to the rules debate may be limited by a two-thirds vote of the Senate upon the petition of sixteen senators. The rule, however, has been applied but once.

agreed to or the bill will fail, at least for the session. Rarely is there sufficient time for a second conference, and even more rarely will the second conference accomplish anything more than the first. Thus actually the decision upon important phases of legislation rests in the hands of a small group of men, for on important measures it is a stubborn house, indeed, which will turn down a bill drawn along the broad principles it approves merely because certain items or details are displeasing to it. New subject matter, even, has been known to appear as a consequence of conference proceedings.

The concentration of power in the hands of this more or less irresponsible group and the difficulties centering around this phase of procedure have more than once raised the question whether bi-cameralism (the existence of two houses in our legislatures) makes for responsible government. Particularly has the question been raised within the states, for there the abuses of the conference system have been most pronounced.

Historically the second chamber was established to insure aristocratic representation. Only the comparatively rich were permitted to vote for members of the upper house, and only the rich were permitted to sit as members therein. As the historic reason has become less and less important, other reasons have been found for the maintenance of the system. The division of the legislature into two houses, it is claimed, checks tyranny, for there is usually sufficient disagreement between the two bodies to prevent legisla-

tive encroachment. Furthermore, the mutual jealousy of the two branches causes the one to scrutinize the work of the other with a critical eye. Hence none but well considered pieces of legislation have very much chance of passage, and hasty action is assuredly prevented. It is also usually added that it is more difficult to corrupt two bodies than one.

What weight should be attached to these claims? Do they offset the disadvantages of the conference committee and the attendant lack of responsibility?

So far as the system rests upon the aristocratic claim for class representation, it rests upon a very fragile foundation, for it is certainly irreconcilable with the theory of democracy. Of no greater merit is the contention that such a system is necessary for the prevention of tyranny. The courts have been pretty effective agencies in preventing the encroachment of the legislature upon the other parts. And they are very likely to continue so for some time to come. Although the belief that the existence of two houses sometimes slows up legislative action is not altogether fallacious—it very frequently has that effect when the two houses fall into the possession of opposite parties—nevertheless it is a question whether this is desirable. Few other countries in the world are as conservative in political matters as we are. Elsewhere second chambers are toppling. The general theory seems to be that if the upper house agrees, it is unnecessary; if it disagrees, it is a nuisance. In view of this, whether the people of America need any such

check upon their actions is debatable. There might also be raised the query as to whether this check actually operates in times of crisis. As we already know, decisions upon important pieces of legislation are usually made in party council. And where the party has control of both branches of the legislature, the existence of the upper house does not constitute a check.

How much attention should be paid to the claim that the survey of the proposals of one house by the other prevents ill-considered legislation from passing, may be judged from an analysis of the situation in New York in 1910. Of the 2935 bills introduced into the legislature that year thirty-four per cent were killed in Assembly committees and thirty-nine per cent in Senate committees. Six per cent of those reported out were killed by each house. Something over sixty per cent of the measures introduced into one house went to the other. Of these, the Assembly killed six per cent of the Senate's bills, while the Senate killed fourteen per cent of the Assembly's. Thus each chamber *did* in some measure check the other. However, nearly twenty-five per cent of the bills that passed both houses were vetoed by the Governor. The Governor and the committees together were responsible for the demise of approximately sixty per cent of the proposals. In comparison with this the check of the upper house seems ineffective, indeed.

The contention that it is harder to corrupt two

houses than one, seemingly so obvious, contains, nevertheless, a fundamental fallacy. The fact is that under modern conditions the existence of two houses just doubles the opportunity for corruption. *To prevent legislative action* is the desire of the sinister forces in the vast majority of cases to-day. That there is greater chance of doing so where two legislative bodies exist, each with an absolute veto upon the action of the other, than where there is one, is apparent. Two opportunities of corrupting a majority are present under this system, whereas only one exists under the uni-cameral arrangement.

The fact also that there are certain inconveniences inherent in operation of the bi-cameral system adds force to the question of its wisdom. The very existence of a second chamber with its duplicate leadership and processes adds confusion to the political machinery, and in so doing lessens the responsibility of the participants in legislative activity. Not only this. The device has more than once been used as a method of avoiding responsibility. Bills demanded by public opinion have frequently failed, despite the fact that both houses ostensibly approved the principle involved, simply because the two branches were unable to agree on details.

The proposition of abandoning the bi-cameral system is not an academic one. It has been proposed by practical politicians in Arizona, Kansas, Ohio and Oregon. And the example of the Canadian provinces,

seven of which have long operated successfully under a uni-cameral system, constitutes a standing challenge.

Suggested Reading

Brown, George R. *The Leadership of Congress.* (1922)

BOOK FOUR

THE EXECUTIVE AND THE ADMINISTRATION

CHAPTER XVI

TYPES OF EXECUTIVE

The functions of the chief executive are twofold—political and administrative. Nowhere is his political aspect more openly recognized than under the parliamentary system of government. There, the cabinet officer's retention of power rests entirely upon his ability to maintain a following in the legislative body. And this, to an overwhelming degree, depends upon his ability as a political leader. When a cabinet has lost the confidence of the parliament, two courses are open to it. It may resign, or else dissolve the house and carry the issue to the country. In either case its life is determined almost entirely by the political skill of its constituent members. Furthermore, practically all legislation passed by a parliamentary body is initiated by the cabinet. (Particularly is this true in England.) Thus full responsibility for public policy is thrown upon the chief executive.

Not so open is our avowal of the political function of our chief magistrates. In fact, the opening sentence of Article II of the Constitution might be interpreted as a denial of such activity. ("The executive power shall be vested in a President of the United States of

America.") And the fact that the term of office is definitely fixed at four years, only adds color to this interpretation, for it is apparent that a coincidence of astronomical and political phenomena can hardly be expected as a recurring circumstance. Nevertheless, despite the declaration of the separation of powers apparently implied here, and expressly set forth in some of the state constitutions, certain responsibilities of political leadership are very evidently placed upon our chief executives.

That very article of the Federal Constitution which seems to endorse the principle of the separation of powers says concerning the President: "He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may on extraordinary occasions convene both houses, or either of them, and in case of a disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper." *Similar powers are granted to the governors of many of our states.* A further provision declares that if the President returns a measure to Congress unsigned, only a two-thirds vote of both houses of the national legislature can enact it into law. *The grant of this power of veto is likewise found in the majority of the state constitutions.*

Through the use of these powers the chief executives, state and nation, have played a tremendous part in the determination of our public policy. In the

states to a greater extent, perhaps, than in the nation, has the power of calling special sessions been used. The executive message and veto, however, have been equally developed under all jurisdictions, although the power frequently granted to the governor of vetoing items in appropriation bills has in some measure given him a more effective weapon than the one granted to the President. The vigorous use of the presidential veto since Cleveland, however, has established the President also as a decided force to be reckoned with in law-making.

Equally potent, although non-legal, has been the power of patronage. One of the reasons for the remarkable legislative record that the first Congress under Woodrow Wilson made was, the reader doubtless recalls, the judicious use made by the President of his power of appointment. The distribution of offices is an exceedingly important matter from the point of view of the political machine. It is quite possible, therefore, for an executive to build a back-fire under a particular legislator who is "otherwise minded" by withholding patronage; or, worse yet, by strengthening whatever opposition there may be to the man in his locality through the placing of all appointments at the disposal of his rivals. Which has the greater powers in this regard, the President or the governors, it is difficult to say.

Political leadership, however, does not constitute the sole duty of a chief executive. The four-year term was devised for the President primarily for administra-

tive reasons, that is, because of the belief that permanence in office should be assured for at least that period of time for the sake of administrative stability. It is primarily for administrative reasons that those who are proposing the reorganization of state governments are advocating a similar term for the governor. At least as much attention must be given to the office of the chief executive from this point of view as from the political. In fact, so important is the task of administration that one is almost inclined to say that it outweighs all other problems of government. Withdraw the parties, and possibly some elements of popular control would be lost. Withdraw the administration and chaos, and confusion would immediately result. The mere removal of the traffic squad from a metropolitan city would be sufficient to throw the city into utter disorder. The withdrawal of the police would throw the city into terror. A cessation of the entire governmental administration would overthrow civilization.

Since such is the case, the problem of the organization of the executive from this point of view is important, indeed. A comparative study of existing chief executives viewed from this angle will therefore be well worth while.

The cabinet, as we have already seen, is designed primarily as an instrument of political leadership. And as the parliamentary system operates in France, where cabinets have a turnover of approximately one a year, there is not much doubt but that the absence

of attention to this very important side of the executive's task results in a correspondingly lower tone of administrative efficiency than would otherwise be the case. Nor can any blame be placed upon the individual cabinet members for this, as it is impossible for any one to master the details of administration in the short time allotted to a French cabinet.

As the parliamentary system operates in England and in Canada, however, long terms have been the rule rather than the exception, with the consequence that opportunity has been afforded the executive to study problems of this character.

One thing can be said in favor of the cabinet system. The fact that in this form the executive is composed of a number of individuals renders it likely that among them there will be some of administrative ability who will in general bolster up the entire administration. This is in striking contrast to the presidential system, where the tone of the administration stands or falls upon the judgment of one man.

More than once, however, criticisms have been leveled against the system for its sheer waste of administrative ability. Under it, although the Minister of Education may be the ablest educator in the world, although the Minister of Agriculture may be exceedingly efficient, nevertheless, if parliament disagrees with the cabinet upon the question of the sale of the Bahama Islands to Liberia, out they both go. The cabinet must stand or fall together.

This fact has often raised the question whether the

Swiss system would not be an improvement. Switzerland has a *plural* executive. Each minister is responsible for the conduct of his own department and stands or falls upon his own record. If the Minister of the Interior is censured for the inefficient handling of the railways, the activities of the Department of Justice and Police are not affected, nor does any change in personnel occur in other than the affected department. In fact, the defeat of a project advocated by a particular minister does not even mean his resignation, unless he is unable to reconcile himself to the management of the department along the lines insisted on by the legislature.

Against this system, however, it is argued that although such procedure is conducive to the economy of individual administrative efficiency, nevertheless, it does not necessarily produce great cabinet efficiency. It may, indeed, produce a lack of harmony in the cabinet which will more than offset anything that has been gained.

In contrast with the European types of executives is the American. Here, all power is concentrated in the hands of the President, checked, it is true, by legislative enactment and the necessity for the ratification of his more important appointments by the Senate. He is assured of four years in office, and custom usually permits four years more. Actually he can choose his official family without any interference on the part of the Senate. He has thus concentrated in him great possibilities for good and for evil. If he

is an able man, or if he has the ability to select an able cabinet, his four years in office and his extensive powers of direction and control combine to make possible both a stable and an efficient administration.

The fact that he is constantly under the blaze of pitiless publicity and that there is no escape from the responsibilities thus assumed, combine to give him every incentive to put forth honest effort. Should a mediocre man be elected to the position, one too poor a judge of character to select an able cabinet, he could without doubt do considerable harm. The combined action of Congress and the bureaucracy, however, would in all likelihood minimize the damage to an amazing degree. With all its dangers this is the type of administrative organization which has produced results, at least in the *American* business world.

These, then, are the types of chief executives found among the nations of the earth. We have, however, within the United States certain variations of these types well worth study. The first of these is the state executive. In the average state he is a hybrid between the presidential form of executive and the Swiss; that is, we have a governor who in title and popular esteem occupies a position within the state very similar to that which the President holds within the nation. In a campaign the governor is so much the central figure that very frequently the other candidates are lost sight of. Furthermore, if anything goes wrong in the course of an administration it is the governor who receives the blame. Thus, *in this*

particular, the office of the governor and that of the President bear a marked similarity.

But although the responsibility is his, the power is not. The existence of several independently elected executive officers alone prevents this. Superficially on its administrative side our state executive resembles the Swiss, but only superficially. It is in truth a plural body, elected, however, not by a legislature jealous of its rights and continually scrutinizing its servants, but by an electorate overburdened with the long ballot and generally apathetic toward politics. The result is that all too frequently exceedingly inferior men reach the lesser offices on the state ticket. The mere diffusion of power and responsibility would in itself, probably, be sufficient to lower the general tone of state administration, but this, combined with the type of men often selected, can have but one result—inefficiency. The fact that the powers of appointment and removal have not, as in the federal administration, been concentrated in one place, but have been scattered among innumerable hands, has likewise contributed to the same end. In New York, for example, there are sixteen different ways of appointing a man to office and at least seven of removing him. Furthermore, there is no correlation between the power to appoint and the power to remove. All this could spell, and has spelled, but one thing—administrative inefficiency.[1]

[1] The twelve states which have recently reorganized their governments are not included in this description.

In contrast to the state organization is that of cities. Four general types prevail—the strong mayor, the weak mayor, the commission, and the city manager, as we have seen. The strong-mayor type in general resembles the presidential, the requirement of a council-manic check being usually lacking. Complete power over, and responsibility for, the administration is thus concentrated in the hands of the mayor. Under the weak-mayor type, a situation similar to that existing in the states generally prevails. This type, however, has in great measure been going by the board. Two other types have been in part replacing it, the commission and the city manager, although the strong-mayor plan has also made considerable inroads upon the position it once occupied.

The commission plan concentrates full administrative power in the hands of a commission of from five to seven men who, as we have already seen, are also the policy-determining body of the city. Under some variations of the plan each man runs for a specific office and becomes the head of a particular department. Usually, however, the department heads are determined after the election by the commission. In theory the commission is responsible for the administration. Actually the tendency is to allow each individual to run his own department as he sees fit. A further development of this scheme has been the city-manager type of organization. Here we find in theory a complete abnegation of the administrative function on the part of the popularly elected officials and a delegation on their

part of these functions to an appointed manager. Under the manager the lines of authority are direct and responsibility is clear. To what extent interference on the part of the council perverts the directness of those lines, it is difficult to say. To what extent this attempt to separate the political and administrative aspects of the executive's task has been successful, is likewise hard to estimate.

Which of these types of executive is the best, the reader must decide for himself. One, however, can unhesitatingly be condemned—the existing state organization. No executive organized on the principle of diffusion of power and confusion of responsibility can hope to be successful.

Suggested Reading

Beard, Charles A. *American Government and Politics.* (1924)

CHAPTER XVII

REVAMPING THE ADMINISTRATION

The administrative organization of many of our units of government, particularly the counties and states, resembles in many particulars an old-fashioned farmhouse, with its main building, its innumerable lean-tos and its outhouses of one kind or another rambling all over the landscape. Just as in the beginning the main building sufficed to meet the needs of the family, so the original administrative structure of the state was designed to meet the exigencies of the period. And just as lean-tos were added to the dwelling when the necessities of the family demanded them, so were the governmental appendages added when the crises of politics made them imperative. Unlike the usual homestead, however, the original governmental structure has in many cases been completely overshadowed by the lean-tos. But one consequence of this system of architecture has been possible alike in the farmhouse and in the administration—that is, inconvenience.

It must be admitted in both cases that the lean-tos were better than nothing. But it would be an exceptional farmer who, offered the chance to transform his ramshackle dwelling into a modern home, would refuse to do so. And yet that is exactly what the states and

the counties have been doing for many years. Despite the fact that it has been perfectly feasible to remodel state and county administration along modern lines, only twelve states, and one or two counties, have done so.

Perhaps the reader cannot see why the state administration should be compared in this way. Merely to say, however, that in New York there exist one hundred and sixty-eight independent administrative agencies (in striking contrast to the ten departments of the Federal Government) is sufficient to drive the point home. Nor is this an exceptional situation. If the reader stops to analyse the matter, he will in all probability find a situation in his own state almost as bad.

It is, of course, preposterous to believe that the governor, already pressed to the utmost by the burdens of political leadership and the necessity of deciding upon broad questions of public policy, can maintain an adequate supervision over these agencies. In the first place, many of them are absolutely independent of him, being neither dependent upon him for appointment nor subject to his removal. Others, although in theory perhaps subordinate to him, are nevertheless for one reason or another actually independent. One consequence is inevitable—irresponsibility.

The system makes not alone for irresponsibility but for inefficiency as well. The existence of numerous agencies carrying on the same type of work means

duplication in many respects and omissions in others. It makes coöperation improbable and coördination impossible. Furthermore, the benefits of standardization must be forever sacrificed. Added to this is the loss due to the absence of supervision which is apparently inherent in the system. The grand total can have but one result—administrative inefficiency and a consequent increase in the cost of government.

One cannot help but wonder what is the exact cost to the people of New York of the maintenance of nineteen different state agencies for the handling of education, of ten for dealing with taxation and finance, of twelve concerned with public works, of eight responsible for naval affairs, of six engaged in mental hygiene activities and five concerned with health work. Nor can one believe that the division of the welfare work of the state of Michigan among thirty independent officials fails to result in slackness.

The situation is not, however, confined to the states. It is present in certain of our cities and in practically all the counties. Milwaukee County was, perhaps, typical. In 1916 there existed independent of each other a board of county supervisors, nineteen in number, a sheriff, a county clerk, a county treasurer, a register of deeds, a county surveyor, a district attorney, and the coroner, besides eighteen or nineteen judges of one kind or another. A system of overlapping tenures and crossed lines of authority in appointments and removal further complicated matters.[1]

[1] Milwaukee has since adopted a new charter.

The cities as a rule are better organized. An exception, however, is the situation in the "weak-mayor" and council cities. There all the defects of state and county organization exist—intensified many times.

Such a condition is bad not only from the point of view of responsibility and efficiency, but from the point of view of the public as well. This phase of the matter was well expressed by Secretary Hoover when he said in discussing a reorganization of the Federal service—which is in very much better shape than is that of the majority of states:

"The question of government aids to navigation is not by any means one of the principal functions of our government, but it must be a sore trial to the hardy mariner. He must obtain his domestic charts from the Department of Commerce, his foreign charts from the Navy Department, and his nautical almanac from the Naval Observatory—and he will in some circumstances get his sailing directions from the Army. In a fog he may get radio signals from both the Navy and Commerce, and listen to fog horns and look for lights provided him by Commerce; if he sinks his life is saved by the Treasury. He will anchor at the direction of the Army, who rely upon the Treasury to enforce their will. His boilers and lifeboats are inspected by the Department of Commerce, his crew is certificated by one bureau in Commerce; signed off in the presence of another, and inspected at sailing by the Treasury, and on arrival by the Department of Labor." [1]

[1] *Proceedings of the Academy of Political Science,* July, 1921, p. 121.

Upon what basis, then, is it possible to organize an administration so as to produce responsibility and to eliminate inefficiency and confusion? In general, the principles which have been used in the organization of Federal administration have worked very well. Most fundamental of these is the principle of *organization according to function.* Generally speaking, the greatest efficiency will be attained if the units of administration are grouped together according to the kind of work they are doing. By this means coöperation and coördination are made possible. To some extent, at least, overlapping and duplication are avoided, and standardization may be achieved. Furthermore, supervision becomes feasible. Such grouping has, moreover, the added advantage of relieving the pressure upon the chief executive, and to a considerable degree it makes responsibility something more than a name.

Nevertheless, *function* is not the only factor which must be taken into consideration. All other things being equal, it should perhaps be the determining one. However, the efficient use of equipment should receive attention. The relation of the postal savings bank to the post office affords an excellent example of a situation in which organization by function would have been disastrous. Although no common purpose is served by these two units of administration, nevertheless the existence of post offices everywhere which could with little or no trouble add a postal-savings window made it expedient to abandon the principle of

organization by function and follow the dictates of equipment. Thus the postal-savings banks became an adjunct of the post office, and properly so. This is possibly the most striking example of organization according to this principle; nevertheless, this factor must always be taken into consideration in any plan of organization. And where the saving effected through organization upon this basis more than offsets the loss caused by the abandoning of the first principle, needless to say this latter principle should be followed.

Not so important, and yet well worth mentioning, is the possibility of organization according to persons served. When numerous contacts are to be had with the public, it is sometimes desirable to avoid confusion by creating a special "contact office" which may handle within it many unrelated functions.

But, says the reader, if the Federal Government has been organized along these principles, why has there been all this talk about reorganizing the Federal service? The reason is that in part these principles have been departed from, and that in part what was organization upon a sound basis at the beginning has been made unsound by changing circumstances. For example, the public health service of the United States developed in the Department of the Treasury for a very sane reason. The customs officials were the first to board incoming ships and they were therefore the first to discover cases of contagious disease. What

was more reasonable in the early days of the health service, when its chief duty was quarantine, than to place it in close contact with the treasury officials so that they might turn over to it all cases of contagious disease which they discovered? As the service has developed, however, and as it has gone into other lines of activity, some question has arisen as to whether its place in the Treasury Department is most conducive to efficiency. The growth of other welfare activities on the part of the Federal Government has, furthermore, intensified the question. The result is that a separate Department of Education and Welfare is now being urged.

Administrators are likewise beginning to question the efficiency of a plan of organization that includes in the Treasury Department such obviously non-fiscal services as the Coast Guard, the Supervising Architect's office, and the Bureau of War Risk Insurance. They wonder whether the maintenance as independent institutions of the Coast and Geodetic Survey, the Lakes Survey, and the Navy Hydrographic Office—all engaged in making marine surveys—does not mean a duplication of work and equipment to some extent, and needless overhead expense.

The difficulty of maintaining the hierarchical organization, desirable though it may be, is seen in the recent development in the Federal service of independent boards and commissions. They vary in size and importance from the Interstate Commerce Commission

to the Commission for the Standardization of Screw Threads. Some of them are justified in their status no doubt; others are not. They are due in great measure to the fact that the Federal Government is but now entering into new fields of activity.

It is impossible, however, to eliminate all duplication and all overlapping by any system of organization. Every department, however organized, must purchase supplies; many must liquidate stocks; all must occupy office space; and many must use motor transportation. Hence an overlapping of functions is bound to occur. To minimize waste in this regard the Federal Government has recently inaugurated a system of liaison officers and coördinating boards which may very well be exemplified by the states. At present these agencies are eight in number.

The first is the Federal Purchasing Board, which is made up of the chief purchasing officer of each department and a chief coördinator appointed by the President as chairman. Its functions are to prevent competition between the different departments and, wherever possible, to effect the economies of large-scale purchasing. The Federal Liquidation Board has been organized upon the same principles for the sake of coördinating the sales of the large surplus stocks the departments have accumulated. It is no longer the practice of any department to dispose of its stock without reference to the needs of others. The custom of doing so resulted at the close of the war in the purchase of goods from one department by specu-

lators who sold them to other departments at enormous profits. Supplementing these boards are the corps area coördinators, who locate and inspect surplus stocks, and supervise the purchasing functions of the several departments and establishments in their respective geographic areas.

The surveyor general, in turn, determines in what manner and to what extent the premises of the Government of the United States outside the District of Columbia shall be occupied and used by the various departments and bureaus. He may assign and reassign room in such a manner as seems to him conducive to the greatest efficiency.

A Federal Motor Transport Agent has been created for the purpose of introducing flexibility into the assignment of motor vehicles to the departments. It was discovered that the rule of absolute fixed assignments was working a hardship upon the Government. The motor transport of one department might well be overtaxed, when there were motor vehicles standing idle in other departments. Civilian trucks were frequently being hired by departments to do work which government trucks, had they been efficiently distributed, could readily have performed. Thus a saving in this respect is looked for. The overlapping of service and duplication of effort, however, are nowhere more apparent than in the conduct of traffic. Through the Federal Traffic Board's efforts, a considerable saving in the Government's $200,000,000 traffic bill is anticipated.

Finally a Specification Board has been established. The duty of this board is to compile and adopt standard specifications for materials and services, and to bring specifications into harmony with the best commercial practice wherever conditions permit.

These coördinating agencies have been found exceedingly useful in the Federal Government, and the states and counties would do well to follow the example there set.

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CHAPTER XVIII

RECRUITING FOR GOVERNMENT SERVICE

Approximately three and one-half million people constitute the civil service of the United States, Federal, state, and local. Through their hands pass yearly, some nine billion dollars, constituting, so it was estimated in 1921, one eighth of the total income of the country. Their salaries alone reach almost four billion dollars. These facts may, perhaps, give some conception of the size of the Government's employment problem, which in itself warrants serious attention. And that this is not an abnormal situation caused by the war, a study of prewar statistics indicates. In fact, these statistics show that we can expect the problem to be accentuated in point of size through the expansion of the state and municipal activities which were curbed by the war.

It is not the size of the problem alone, however, that calls it to our attention. The strategic location of Government officials in relation to our entire social life in itself makes the matter of utmost importance. Illustrations of this might be drawn from almost any branch of the service. The lives of millions of tenants in our cities depend upon the capacity and honesty of

the building inspectors not only with respect to fire, but also with respect to the construction of the buildings themselves. To a greater degree, perhaps, is the public dependent upon the health service in its varied phases. Carelessness in connection with the water supply may at any time result in an epidemic. Dishonesty in food inspection may have equally dire results. It was the maladministration of the San Francisco Board of Health that was to blame for the entrance of bubonic plague into this hemisphere; for at the time of the San Francisco Exposition they refrained from taking active steps in stamping out a local epidemic from fear that the news of the local infection might injure the success of their project.

Illustrations might be multiplied but sufficient have already been cited to indicate the catastrophic consequences of inefficiency and dishonesty in the government service. Mention should also be made of the gains that have accrued to society when high-grade men have filled the posts. Perhaps the most outstanding example of this was the discovery of the cause of yellow fever by an army physician. The gains which have already accrued to humanity through this discovery can never be calculated.

It is imperative, therefore, that these governmental positions be filled with the highest grade of men obtainable. How can it be done?

In general, two ways have existed. One is popularly known as the "spoils system"; the other is the "merit system." The former is the traditional and still ex-

ceedingly widespread method. It is still in use in thirty-eight of the states, in all but 300 of the cities, and in practically all of the counties. The chief argument in its favor is the argument of *executive responsibility*. Complete harmony is necessary between the chief executive and his subordinates if efficient administration is to be secured. And it is maintained that this can be secured only when all offices, from top to bottom, are filled by members of the same party.

Superficially the contention seems to be sound. A moment's reflection, however, reveals the fact that the chief tasks of administration are not partisan. There is, after all, no Democratic way of mixing concrete; nor is there a Republican way of causing chemical reactions.

But, it is declared, subordinates of opposite political creeds may sabotage in order to destroy the public's faith in the administrative ability of the party in power. Should such a situation arise, only one course is possible and that is the removal of the undesirables. It would then be removal for inefficiency, however, and not for political convictions. That such a condition would ever arise is very doubtful, for under the administration of an enemy the natural inclination of those of the opposite political faith would be to perform their functions in such a way that the charge of inefficiency could not be made nor removal follow.

Beneath these rationalizations lies the real driving force that has made for the maintenance of the system—partisan appetites. For a frank statement of

the parties' point of view we must again turn to the philosophizings of George Washington Plunkitt, the old-time Tammany leader who was quoted in an earlier chapter.

"This civil service law," he says, "is the biggest fraud of the age. It is the curse of the nation. There can't be no real patriotism while it lasts. How are you going to interest our young men in their country if you have no offices to give them when they work for their party?

"This is an awful serious proposition. Free silver and the tariff and imperialism and the Panama Canal are trifling issues when compared to it. We could worry along without any of these things, but civil service is sapping the foundation of the whole shooting match. Let me argue it out for you. I ain't up on sillygisms, but I can give you some arguments that nobody can answer.

"First, this great and glorious country was built up by political parties; second, parties can't hold together if their workers don't get the offices when they win; third, if the parties go to pieces, the government they built up must go to pieces, too; fourth, then there'll be h—— to pay.

"Could anything be clearer than that? Say, honest now, can you answer that argument? Of course, you won't deny that the government was built up by the great parties. That's history and you can't go back of the returns. As to my second proposition you don't deny that either. When parties can't get offices

they'll bust. They ain't far from the bustin' point now, with all this civil service business keepin' most of the good things from them. How are you goin' to keep up patriotism if this thing goes on?" [1]

And that the spoils system does stimulate a certain type of individual to political activity, few will deny.

Why, then, has this method of choosing men to office been abandoned in the most progressive jurisdictions? There are at least six charges against it. First, it causes an unnecessary increase in offices; second, it fills the offices with incompetent men; third, it impairs efficiency through the development of an exceedingly rapid turnover; fourth, it wastes the time of both administrators and legislators; fifth, it causes an increase in the cost of government; and sixth, it breeds corruption.

The truth of the first charge will be attested by anybody living under a jurisdiction in which the spoils system still prevails. Frequently, the daily papers carry puns on the situation. The cartoonist who portrayed a clerk in a Government office declining a cup of coffee offered him at lunch with the horrified exclamation, "My dear fellow, it will keep me awake all the afternoon," but pictured, more than likely, an actual incident. Or if the incident was not real, it at least seemed very much in keeping with the general repute of the Government service.

That appointments made in consideration of party work rather than upon the basis of qualifications for

[1] Riordin, *op. cit.*, p. 25.

office will result in the appointment of incompetent men, needs no proof.

The expense involved in the labor turnover is not, perhaps, so generally realized. Only when one discovers that private capital estimates the cost of replacing an industrial employee at from ten dollars to three hundred dollars, depending on the degree of skill involved, and the cost of replacing a clerk at approximately one hundred dollars, is it possible to attain a real conception of the cost of the spoils system. The principle of the spoils system, carried to its logical conclusion, would bring about a complete change of personnel with each change of administration. At no time, however, has the principle been applied in its entirety. Necessity makes imperative the retaining of a certain number of men who are acquainted with the routine of the service. To the extent that it has been applied, however, by just so much has the efficiency of the service been impaired. And to just that degree has the nation suffered.

Furthermore, the pressure upon both legislators and administrators has very frequently consumed so much of their time that they have in fact become nothing more than office brokers. The real work for which they were elected has suffered accordingly.

The final charge against the system is that it breeds corruption. In general, offices are used for the buying of political support when they are distributed under the spoils system. Offices, not principles, become the chief stimulus to political effort. Ethically it is hard

to see any difference between the man who sells his political influence for office and the man who sells his vote for money, save in the matter of degree. Nor is it any wonder that serious scandals occur with this type of individual in office. It is, indeed, an easy transition from the stage of thought which permits the manipulation of public office for political advancement to one which permits the use of official position for aggrandizement in other ways.

This, then, is the spoils system and these are the charges against it. What method of choosing individuals to fill the administrative service has been devised to replace it?

The usual remedy has been the merit system. A civil service board has been appointed for the purpose of eliminating spoils and developing a system of personnel management. The purpose of the board might be stated as the reduction of the labor turnover, the recruitment of the highest type of personnel, and the development of zeal in the service.

A system of examinations has been devised for the elimination of the unfit. These examinations are usually designed to test the applicant's ability to fill the *particular* position in question. They vary according to the character of the work to be performed. In New York common labor is given a physical examination and a strength test. Applicants for positions as inspectors of blasting are sent down into an excavating project and allowed to demonstrate their ability to do blasting. Inspectors of weights and measures are

given defective scales in which to discover the defects. For other positions other examinations are used. A part of the examination of the Director of Food Inspection was to "outline a plan for the organization of an inspection force for the proper control of the food supply of a city of 4,500,000 on a budget allowance of $230,000."

For many positions the written examination is not all-conclusive. Other elements are taken into serious consideration—education, experience, character, etc. When a vacancy arises the three names standing highest on the lists are certified as eligible for appointment. From these the appointing officer may take his choice. This, to some extent, is a departure from the merit principle, but it has been justified upon the ground that the examination does not reveal a man's full character. In the old days, when an examination meant a written examination, nothing more, there was without doubt justification for the procedure. How much justification remains in those jurisdictions where the examinations have been worked out with scientific precision, is open to question.

By these means, to some degree at least, partisan considerations in appointments have been minimized, and the unqualified have been barred out.

The work of the commission does not end here, however. Only under a system in which the employees receive equal pay for equal work, in which promotion takes place for merit, and in which promotion is

reasonably rapid, can the Government hope to attract, or hold, men of high calibre. Hence the task of the civil service commissions has been to produce these conditions in the Government employ. The result has been that movements for reclassification, that is, ironing out the differences in pay and work which everywhere remain as vestiges of the spoils system, have been under way. Efficiency records have been introduced. Transfers from one department to another when openings in the upper ranges of the service occur, have been made possible. And agitation for a retirement system has become widespread.

Although it cannot be said that all the problems that confront civil service commissions have by any means been solved, nevertheless *it can be said that the civil service system has already proved itself infinitely superior to the spoils system.* And that wherever it has had adequate support, it is on the high road to the solution of the problems which still confront it.

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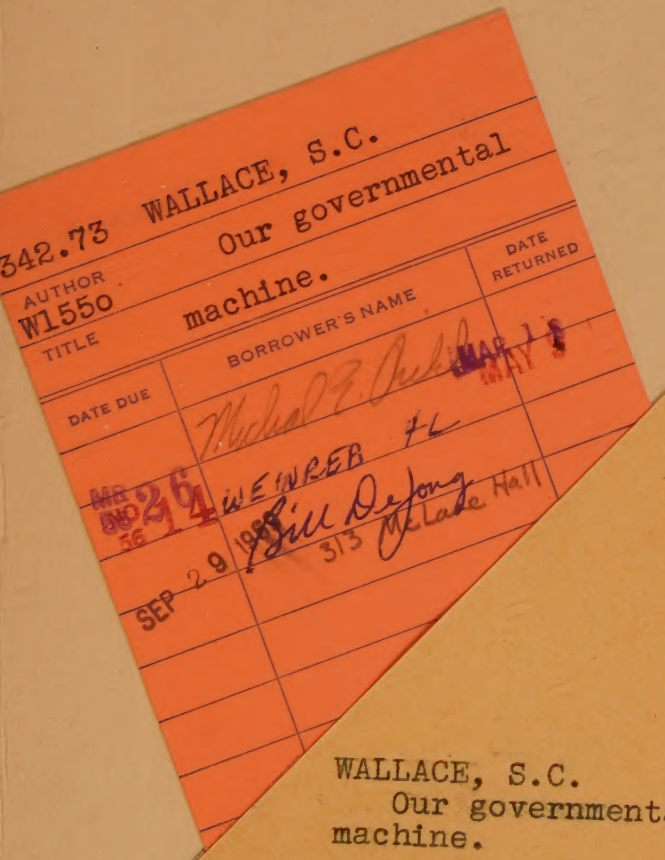
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